

Wednesday  
November 6, 1985

# Federal Register

**Briefings on How To Use the Federal Register**  
For information on briefings in Atlanta, GA, and Philadelphia, PA, see announcement on the inside cover of this issue.

## Selected Subjects

- Air Pollution Control**  
Environmental Protection Agency
- Animal Diseases**  
Animal and Plant Health Inspection Service
- Aviation Safety**  
Federal Aviation Administration
- Chemicals**  
Environmental Protection Agency
- Fisheries**  
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- Freedom of Information**  
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- Hazardous Substances**  
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- Immigration**  
State Department
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Internal Revenue Service
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National Highway Traffic Safety Administration
- Pesticides and Pests**  
Environmental Protection Agency

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**How To Cite This Publication:** Use the volume number and the page number. Example: 50 FR 12345.

## Selected Subjects

### Radio Broadcasting

Federal Communications Commission

### Railroads

Interstate Commerce Commission

### Reporting and Recordkeeping Requirements

National Oceanic and Atmospheric Administration

### Savings and Loan Associations

Federal Home Loan Bank Board

### Trade Practices

Federal Trade Commission

## THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### ATLANTA, GA

**WHEN:** Nov. 21; at 1 pm.  
Nov. 22; at 9 am. (identical session)

**WHERE:** Room LP-7,  
Richard B. Russell Federal Building,  
75 Spring Street, SW., Atlanta, GA.

**RESERVATIONS:** Deborah Hogan,  
Atlanta Federal Information Center.  
Before Nov. 12: 404-221-2170  
On or after Nov. 12: 404-331-2170

### PHILADELPHIA, PA

**WHEN:** Dec. 17; at 1 pm.  
Dec. 18; at 9 am. (identical session)

**WHERE:** Room 3306/10  
William J. Green, Jr., Federal Building,  
600 Arch Street, Philadelphia, PA.

**RESERVATIONS:** Laura Lewis,  
Philadelphia Federal Information Center,  
215-597-1709



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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 71 and 78

[Docket No. 85-065]

#### Individual Identification Devices for Cattle and Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** This document amends the regulations in 9 CFR Parts 71 and 78 by requiring that certain individual identification devices remain on cattle and swine while such animals are being moved in interstate commerce, from the point of origin of the interstate movement to final destination. Previously, the regulations required that the devices remain on the animals only for movement interstate. The intended effect of this action is to strengthen the tools available for use against the spread of communicable diseases of cattle and swine by helping establish a more effective means of tracing infected and exposed animals.

**EFFECTIVE DATE:** December 8, 1985.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Robert E. Wagner, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8884.

#### SUPPLEMENTARY INFORMATION:

##### Background

A document published in the Federal Register on April 17, 1985 (50 FR 15166-15169), proposed to amend the "General Provisions" regulations and the "Brucellosis" regulations (contained in 9 CFR Parts 71 and 78 and referred to below as the regulations) by making changes concerning individual identification devices.

Comments were solicited in response to the proposal for a 60-day period ending June 17, 1985. Twenty-seven comments were received. These comments were from State Departments of Agriculture, members of Congress, veterinary associations, and representatives of the cattle and swine industry. Eight commenters supported the proposal. The other commenters objected to one or more aspects of the proposal. These objections are discussed below. Based on the rationale contained in the proposal and in this document, the provisions of the proposal have been adopted in the final rule as proposed.

Some of the commenters apparently assumed incorrectly that there were no existing requirements for individual identification devices for cattle or swine moved from one State into another State, and objected to the placement of any such requirements. No changes are made based on these comments. Prior to the publication of the proposal, individual identification devices were already required by the regulations for the interstate movement of certain cattle and swine. It was merely proposed to require that such individual identification devices remain on the animals for the full time they are being moved in interstate commerce (from the point of origin of the interstate movement to the animals' final destination).

One commenter suggested that the interstate movement of cattle and swine directly to slaughter be exempted from the proposed requirement that individual identification devices remain on the animals for the full time they are being moved in interstate commerce. Individual identification devices, along with documents such as owner-shipper statements, are intended to allow an animal found to be infected with a disease to be traced back through marketing channels and thereby help identify the source of the disease and other animals affected with the disease. Certain movements in interstate commerce of cattle and swine to slaughter are already exempted from any requirement for individual identification of the animals. Under current § 71.18(a)(1)(ii), cattle moved from a farm, ranch, or feedlot to a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), a

slaughtering establishment specifically approved under 9 CFR 78.16(b), or a stockyard posted under the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), for subsequent movement to such slaughtering establishments, are already exempted from this requirement if the cattle are identified upon arrival at the slaughtering establishment or stockyard, as specified in the regulations. Also, with respect to swine, § 78.30(a) provides (footnotes not included):

(a) *Sows and boars sold for slaughter or for sale for slaughter.* To provide for traceback to their herd of origin, all sows and boars moved interstate for slaughter or for sale for slaughter shall be identified to the herd of origin by a Veterinary Services approved tattoo code applied \* to the back of each swine prior to such interstate movement and before they are mixed with swine from any other source; *Provided,* That upon written request from a State Animal Health official of a State, the Area Veterinarian in Charge of that State may authorize the use of Veterinary Services approved swine identification tags \* on sows and boars instead of or in addition to the tattoo when such approved swine identification tag \* is determined by him to be necessary to provide for traceback to the herd of origin. However, sows and boars may be moved interstate, without such prior identification, directly from a herd of origin to a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), or a State inspected slaughtering establishment, or to a stockyard posted under the provisions of the Packers and Stockyards Act, as amended (7 U.S.C. 181 *et seq.*), or a market agency or dealer registered under said Packers and Stockyards Act, if such swine are identified to the herd of origin by a Veterinary Services approved swine identification tag \* or approved tattoo code applied \* to the back of each swine upon arrival thereat and before they are mixed with swine from any other sources.\*

Individual identification devices are not required for the movements indicated above because the required identification at destination would be adequate for traceback purposes, if necessary. Individual identification devices are needed for other movements in interstate commerce of cattle and swine to slaughter because, without individual identification devices, often there would not be adequate identification to trace the movement of cattle and swine back to the point of origin. Therefore, no changes are made based on this comment.



One commenter asserted that new identification devices should be allowed to be placed on cattle at livestock markets during movement in interstate commerce in lieu of the devices required on the cattle at the beginning of the movement since "many of the cows several years old that are moved in interstate commerce are wearing tags that are either worn or illegible." No changes are made based on this comment. Based on experience, it appears that it is less cumbersome, less time consuming, and more accurate for traceback purposes, to read and record the identification number on an existing identification device than to remove the existing identification device, apply another identification device, and record the number from the new device. Placing new identification on animals during movement in marketing channels prior to the animals reaching their final destination may make recording transactions simpler for individual stockyards or auction markets, but, unless new identification is correlated with old identification, traceback may become impossible. Further, it appears that allowing new identification in lieu of the original identification would only increase the probability of error and allow an opportunity for misrepresenting the origin of an animal.

Proposed § 71.18(a)(3) provides that each person who ships, transports, or otherwise causes cattle to be moved in interstate commerce is responsible for the identification of the cattle as required by the regulations. Proposed § 78.30(c) contains similar provisions applicable to swine. One commenter objected to the inclusion of persons who "otherwise cause the cattle [or swine] to be moved in interstate commerce" in these provisions, based on the assertion that it would place responsibility for identification on packers who purchase cattle or swine in one State and move the animals to another State. The commenter indicated that the responsibility for identification should be solely that of the "livestock producer, his agent or his trucking company." No changes are made based on this comment. The inclusion of persons who "otherwise cause cattle [or swine] to be moved in interstate commerce" was intended to cover employees or other agents of a purchaser who buy animals and have them shipped interstate. These employees or other agents are in a position to exercise control over matters relating to the movement of animals in interstate commerce, including the individual identification of the animals. Accordingly, it is necessary that the employees or other agents assume

responsibility for the identification of the animals.

One commenter suggested that the wording of § 71.18(a)(3) be rephrased to define "persons who ship, transport, or otherwise cause cattle to be moved in interstate commerce" as those who have "controlling authority" over the shipment. No changes are made based on this comment. It was intended that the requirement apply to "any person who ships, transports, or otherwise causes cattle to be moved in interstate commerce." The term "controlling authority" does not sufficiently identify those persons subject to such requirements.

One commenter requested that the final rule include a provision stating that "Nothing in this rule's language shall be construed to place any responsibility for the removal of identification devices by those not in the employ of persons causing or carrying out the interstate movement of cattle. . . ." No changes are made based on this comment.

The commenter's request apparently relates to proposed §§ 71.18(a)(4) and 78.30(d) of the regulations. The regulations at proposed § 71.18(a)(4) provide that:

No person shall remove or tamper with or cause the removal of or tampering with a backtag, eartag, brand, or other identification device required to be on cattle pursuant to this section while such cattle are being moved in interstate commerce, except at the time of slaughter, or as may be authorized by the Deputy Administrator, Veterinary Services, upon request in specific cases and under such conditions as the Deputy Administrator, Veterinary Services, may impose to ensure continuing identification.

Proposed § 78.30(d) contains similar provisions concerning swine. It was not intended that the prohibitions apply only to "persons in the employ of persons causing or carrying out the interstate movement of cattle." As stated in the proposal at 50 FR 15167-15168 it was intended that the prohibitions apply to all persons while the animals are being moved in interstate commerce since an effective tracing program could be frustrated if any of the devices were allowed to be removed or tampered with by anyone.

The same commenter requested that the final rule include a provision stating that "Nothing in the rule's language shall be construed to place responsibility for accidental loss of individual identification devices during shipment. Nor is retention after arrival at final destination necessary." No changes are made based on this comment. The regulations do not apply to cattle and swine which have arrived at final destination, and there is no requirement

that any individual identification device be retained after arrival at final destination. Since the regulations clearly apply only to the period of time during which the cattle and swine are in interstate commerce, it appears to be unnecessary to indicate in the regulations that no retention of individual identification devices is necessary after the cattle or swine have been moved in interstate commerce. Further, it does not appear necessary to include provisions in the regulations specifying that there are no requirements concerning accidental loss of identification devices during shipment since proposed § 71.18(a)(4) and § 78.30(d) clearly apply only to the removal of tampering with identification devices.

The term "person" is defined in Part 78 to mean "any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity." It was intended that the term have the same meaning for the purposes of Part 71. Therefore, the final rule amends Part 71 by adding the same definition of "person" that currently appears in Part 78.

#### Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will not impose additional activities on the part of any person since it merely requires that individual identification devices, which are already required to be applied to certain animals, remain on such animals while the animals are being moved in interstate commerce, from the point of origin of the interstate movement to final destination.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.



**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V)

**List of Subjects****9 CFR Part 71**

Animal diseases, livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

**9 CFR Part 78**

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, Parts 71 and 78 of 9 CFR are amended as follows:

**PART 71—GENERAL PROVISIONS**

1. The authority citation for Part 71 is revised to read as set forth below and the sections in Part 71 are removed:

Authority: 21 U.S.C. 111-113, 114a, 114a-1, 115-117, 120-128, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. The terms in § 71.1 are rearranged alphabetically without paragraph designations.

3. Definitions of "moved" and "person" are added to § 71.1 in alphabetical order to read as follows:

**§ 71.1 Definitions.**

*Moved (movement) in interstate commerce.* Moved from the point of origin of the interstate movement to the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops for any purpose prior to movement to final destination, such as stops at a stockyard or dealer premises for feed, water, rest, or sale.

*Person.* Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity.

4. The heading for § 71.18 is revised to read:

**§ 71.18 Individual identification of certain cattle 2 years of age or over for movement in interstate commerce.**

5. In the first sentence of § 71.18(a), "being moved interstate" is changed to "being moved in interstate commerce" and "shall be moved interstate" is changed to "shall be moved in interstate commerce".

6. In the second sentence of § 71.18(a), "All interstate movements" is changed

to "Any movement in interstate commerce".

7. In § 71.18(a)(1)(i), "May be moved interstate" is changed to "May be moved in interstate commerce"; "when moved interstate," is changed to "when moved in interstate commerce"; and "such cattle are accompanied" is changed to "such cattle when moved interstate are accompanied".

8. In § 71.18(a)(1)(ii), "May be moved interstate" is changed to "May be moved in interstate commerce".

9. In the first proviso of § 71.18(a)(1)(ii), "If such cattle are moved interstate" is changed to "if such cattle are moved in interstate commerce" and "when moved interstate," is changed to "when moved in interstate commerce".

10. In the second proviso of § 71.18(a)(1)(ii), "when such cattle are moved interstate" is changed to "when such cattle are moved in interstate commerce".

11. In § 71.18(a)(1)(iii), the material preceding the first colon is revised to read: "May be moved in interstate commerce for any purpose other than slaughter if such cattle, when moved in interstate commerce, are identified by Animal and Plant Health Inspection Service-approved ear tags in lieu of back tags, and are accompanied when moved interstate by an owner's statement or other document stating".

12. In the proviso in § 71.18(a)(1)(iii), "which are moved interstate" is changed to "which are moved in interstate commerce".

13. In § 71.18, paragraph (a)(3) is revised and new paragraph (a)(4) is added to read:

**§ 71.18 Individual identification of certain cattle 2 years of age or over for movement in interstate commerce.**

(a) \* \* \*

(3) Each person who ships, transports, or otherwise causes the cattle to be moved in interstate commerce is responsible for the identification of the cattle as required by this section.

(4) No person shall remove or tamper with or cause the removal of or tampering with a back tag, ear tag, brand, or other identification device required to be on cattle pursuant to this section while such cattle are being moved in interstate commerce, except at the time of slaughter, or as may be authorized by the Deputy Administrator, Veterinary Services, upon request in specific cases and under such conditions as the Deputy Administrator, Veterinary Services, may impose to ensure continuing identification.

**PART 78—BRUCELLOSIS**

14. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

15. A new paragraph (iii) is added to § 78.1 to read as follows:

**§ 78.1 Definitions.**

(iii) *Moved (movement) in interstate commerce.* Moved from the point of origin of the interstate movement to the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops for any purpose prior to movement to final destination, such as stops at a stockyard or dealer premises for feed, water, rest, or sale.

16. In the heading for Subpart E in 9 CFR Part 78, the word "Interstate" is removed.

**§ 78.26 [Amended]**

17. In § 78.26 "or in interstate commerce" is added immediately after the word "interstate".

**§ 78.30 [Amended]**

18. In the first sentence of § 78.30(a) "sows and boars moved interstate" is changed to "sows and boars moved in interstate commerce" and "prior to such interstate movement" is changed to "prior to such movement in interstate commerce".

19. In the second sentence of § 78.30(a), "may be moved interstate," is changed to "may be moved in interstate commerce,".

20. In the first sentence of § 78.30(b), "all breeding swine moved interstate" is changed to "all breeding swine moved in interstate commerce" and "prior to such interstate movement" is changed to "prior to such movement in interstate commerce".

21. In § 78.30 paragraph (c) is revised and new paragraph (d) is added to read:

**§ 78.30 Identification of sows and boars.**

(c) Each person who ships, transports, or otherwise causes the swine to be moved in interstate commerce is responsible for the identification of the swine as required by this section.

(d) No person shall remove or tamper with or cause the removal of or tampering with a tattoo, approved swine identification tag, or other identification device required to be on swine pursuant to this section while such swine are being moved in interstate commerce, except at the time of slaughter, or as



may be authorized by the Deputy Administrator upon request in specific cases and under such conditions as the Deputy Administrator may impose to ensure continuing identification.

Done at Washington, D.C., this 30th day of October 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-26330 Filed 11-5-85; 8:45 am]

BILLING CODE 3410-34-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Part 563

[No. 85-949]

#### Appraised Equity Capital

Date: October 24, 1985.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is amending 12 CFR 563.13 to extend the "sunset" date of its appraised-equity-capital regulation and make other minor changes to the provisions of that rule.

In 1982, the Board promulgated a rule authorizing institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions") to include an item called "appraised equity capital" in computing their regulatory net worth. That authority was to expire on December 31, 1985, unless the Board elected to renew or rescind the regulation at an earlier date. By its action today, the Board is extending authority for insured institutions to continue to calculate appraised equity capital as part of their net worth from December 31, 1985, to December 31, 1986. In addition, the Board is codifying the "grandfathering" of elections under this regulation so that insured institutions may continue to receive the benefit of the election after the provision expires. Finally, the Board is adopting technical amendments that conform the language of the appraised-equity-capital rule with that of the net-worth rule.

**EFFECTIVE DATE:** November 7, 1985.

**FOR FURTHER INFORMATION CONTACT:** Karen Knopp O'Konski, Attorney (202) 377-6466, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:** On November 4, 1982, by Resolution No. 82-729, the Board issued a final rule

permitting insured institutions to include appraised equity capital in their calculations of regulatory net worth and statutory reserves. 47 FR 52961 (Nov. 24, 1982). "Appraised equity capital" was defined as the arithmetical difference between the net book value and the appraised fair market value of selected eligible office land, buildings, and improvements, including leasehold improvements, owned by an insured institution or any of its subsidiaries. Its definition also includes certain unamortized deferred profits from the sale and leaseback of office properties formerly owned by an insured institution and the value of eligible leasehold interests. When it issued the regulation, the Board was concerned to address the need to maintain public confidence in the thrift industry in an uncertain economic environment. As one means of doing this, the Board determined to permit insured institutions to use previously unrecognized forms of capital—including their accumulated equity in office land, buildings, and improvements—in calculating regulatory net worth.

When it promulgated the appraised-equity-capital regulation, the Board recognized that the measure it adopted was a departure from its own previous policy and from generally accepted accounting principles. In the Board's view, however, appraised equity capital represented a real, though unrealized, equity value that, in case of merger or liquidation, would serve to protect the interests of the FSLIC just as more traditional forms of capital did.

In addition, the Board found that it was particularly appropriate to recognize appraised equity capital as a component of net worth in light of the capital assistance program mandated by Title II of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (1982). The Board believed that recognition of appraised equity capital would enable it to judge more accurately an institution's true financial condition. With such information, the Board could better gauge the extent of capital assistance a particular institution required. For these reasons, the Board determined that a rule allowing the recognition of appraised equity capital, for regulatory purposes only, was reasonable and well-advised in the circumstances.

In the Board's judgment, the appraised-equity-capital regulation is continuing to achieve the objectives it was intended to accomplish. Many insured institutions have included appraised equity capital in their calculations of regulatory net worth. As

a result, the balance sheets of those institutions have provided the Board with a better picture of their financial health, and unnecessary supervisory actions have been avoided.

Although the economic climate for thrifts has improved since late 1982, many institutions are continuing to experience considerable financial difficulty. Extension of the "sunset" date will allow thrifts which have not yet included appraised equity capital in their regulatory balance sheets to take advantage of the appraised-equity-capital rule. The Board therefore finds it appropriate to extend the "sunset" date of its appraised-equity-capital regulation for an additional year until December 31, 1986.

The Board previously announced a policy of allowing any institution that has used appraised equity capital in calculating its net worth before the "sunset" date to continue to include that appraised equity capital in calculating its regulatory net worth after the provision expires. See Net-Worth Requirements of Insured Institutions, 50 FR 6891, 6904 (Feb. 19, 1985). The current amendments include a provision codifying that policy.

These amendments also make technical changes conforming the language of the appraised-equity-capital regulation with that of the Board's recently revised net-worth regulation. The net-worth regulation no longer contains references to "statutory reserves" or "reserves." 50 FR at 6909. The current amendments remove these terms from the appraised-equity-capital regulation and substitute references to net worth.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(b) and 12 CFR 508.12 and 508.13 and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 are unnecessary because the amendments are liberalizing, rather than restrictive, in effect, and because they pertain to internal regulatory reporting procedures rather than to public reports.

#### List of Subjects in 12 CFR Part 563

Savings and loan associations.

#### PART 563—OPERATIONS

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

1. The authority for Part 563 continues to read:

Authority: Secs. 401-405, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1728, 1730);



Reorg. Plan No. 3 of 1947, 3 CFR, 1943-1948 Comp., p. 1071, unless otherwise noted.

2. Amend § 563.13 as follows: amend paragraph (c)(1) by removing the phrase "reserve requirements of paragraphs (a) and (b) of this section" and inserting in lieu thereof the phrase "net-worth requirements of this section", and by removing the word "reserve" before the word "calculations" and inserting in lieu thereof the word "net-worth"; amend paragraph (c)(2)(i) by removing the word "reserve" before the word "calculations" and inserting in lieu thereof the word "net-worth"; amend paragraph (c)(3) by removing the word "reserve" before the word "calculations" and inserting in lieu thereof the word "net-worth"; amend paragraph (c)(5)(ii) by removing the phrase "reserve accounts" and inserting in lieu thereof the phrase "net worth", and by removing the word "reserves" before the word "immediately" and inserting in lieu thereof the phrase "net worth"; and amend paragraph (c)(6) to read as follows:

**§ 563.13 Regulatory net-worth requirement.**

**(c) Appraised equity capital.**

(6) "Sunset" and "grandfather" provisions. Authority to include appraised equity capital as part of an insured institution's net worth under this section shall cease as of December 31, 1986. Any insured institution that has included appraised equity capital as part of its net worth as of December 31, 1986, may use that appraised equity capital for purposes of calculating its net worth after December 31, 1986.

By the Federal Home Loan Bank Board  
Jeff Sconyers,  
Secretary.

[FR Doc. 85-26475 Filed 11-5-85; 8:45 am]

BILLING CODE 6720-01-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 85-AAL-6]

**Revocation of Control Zone and Revision of Transition Area at Valdez, AK**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice revokes the control zone and revises the transition area at Valdez, AK. This action will

allow more efficient use of the airspace, and reduce the constraints and impact on the public in the affected airspace. The circumstance which create the need to revoke the control zone is that weather reports at this airport are provided on an hourly basis without special observations taken and disseminated when significant changes in weather occur. This creates an undue restriction on the users when (1) the last report indicates the weather is below basic visual flight rules (VFR) minimums; (2) the weather is actually above basic VFR minimums; and (3) the next weather report will not be available until on the hour. Revocation of the control zone will provide airspace for VFR aircraft to depart and arrive at the Valdez Airport with 1 mile flight visibility and clear of clouds below 700 feet above the surface. The circumstance which created the need to revise the transition area is the revocation of the control zone. The revised transition area will provide controlled airspace below 1,200 feet down to 700 feet above the surface for the microwave landing system (MLS) approach to Valdez, AK, Airport.

**EFFECTIVE DATE:** 0901 G.m.t., January 16, 1986.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Durand, Procedures and Airspace Specialist, (AAL-536), Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513-0087, telephone (907) 271-5903.

**SUPPLEMENTARY INFORMATION:**

**History**

On April 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the control zone and revise the transition area at Valdez, AK (50 FR 15563). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Thirteen public comments were received, two favoring the proposal, one objecting to the proposal and ten comments with alternative recommendations. The one objection was, removal of the control zone will result in the lowest and most critical portion of the approach being conducted with potential conflicting traffic in weather with one mile visibility. This possibility exists today (with a control zone) because special weather reports are not being taken and the last hour weather report may indicate VFR weather conditions when in fact they are below basic VFR weather minimums. It is essential that all pilots

follow the procedures outlined in Advisory Circular No. 90-42D and Airman's Information Manual, para. 157 (Traffic Advisory Practices at Airports Without Operating Control Towers) in the interest of promoting safety. Ten commenters addressed matters which were not within the purview of the proposal. One commenter had no objection to the proposal under the existing circumstances but recommended that the control zone be reestablished when continuous aviation weather reporting services are restored there. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations will revoke the control zone and revise the transition area at Valdez, AK. Weather reports at the above location are being taken once an hour and do not include special observations when significant changes in weather occur. This can result in reported weather conditions which unduly restrict users. The revised transition area will provide protected airspace for the published instrument approach procedures and allow VFR aircraft to depart and arrive at the above airport with 1 mile flight visibility and clear of clouds below 700 feet above the surface. It is essential that all pilots follow the procedures outlined in Advisory Circular No. 90-42D and Airman's Information Manual, para. 157 (Traffic Advisory Practices at Airports Without Operating Control Towers) in the interest of promoting safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.



**List of Subjects in 14 CFR Part 71**

Control zones, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—[AMENDED]**

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.171 as follows:

Valdez, AK [Removed]

Within a 3-mile radius of the Valdez Municipal Airport, (lat. 61° 07' 58" N., long 146° 14' 24" W.). This control zone is effective from 0800 to 1600 local time daily from mid-October to mid-May, and from 0600 to 2200 local time daily from mid-May to mid-October or during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the U.S. Government Flight Information Publication Supplement Alaska.

3. By amending § 71.181 as follows:

Valdez, AK [Amended]

By removing the words "That airspace extending upward from" and substituting the words "That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Valdez Airport (lat. 61° 07' 58" N., long 146° 14' 24" W.); and from".

Issued in Anchorage, Alaska, on October 23, 1985.

Franklin L. Cunningham,  
Director, Alaskan Region.

[FR Doc. 85-26395 Filed 11-5-85; 8:45 am]

BILLING CODE 4910-13-M

**FEDERAL TRADE COMMISSION****16 CFR Part 13**

[Docket 9194]

**Dr. Barry Bricklin; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent Order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires Dr. Barry Bricklin, among other things, to cease representing that he used his expertise as a psychologist

and expert in the psychological aspects of dieting to test and evaluate weight control programs and products in the same way similarly qualified experts normally would. Also, respondent is prohibited from representing that consumers can eat as much food as they want and still lose weight without also giving specified disclosures about weight reduction; and from making claims about "usual" or "average" weight loss, or the efficacy or performance of weight reduction or weight control products or programs without competent and reliable surveys or other scientific evidence that substantiates the representation. Further, respondent is required to maintain records of substantiation for these years; file compliance reports with the Commission at specified times; and notify the Commission of the discontinuance of his present employment and and future employment in similar areas.

**DATE:** Complaint issued June 24, 1985. Decision issued Sept. 20, 1985.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Michael Dershowitz, FTC/B-407, Washington, D.C. 20580. (202) 376-8720.

**SUPPLEMENTARY INFORMATION:** On Monday, July 15, 1985, there was published in the Federal Register, 50 FR 28592, a proposed consent agreement with analysis in the Matter of Dr. Barry Bricklin, individually (Buckingham Productions, Inc., et al), for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.15 Business status, advantages, or connections; § 13.15-150 Endorsement; § 13.15-237 Professional or scientific status; § 13.170 Qualities or properties of product or service; § 13.170-74 Reducing, non-fattening, low calorie, etc.; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or

Requirements: § 13.533. Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1730 Results; 13.1740 Scientific or other relevant facts.

**List of Subjects in 16 CFR Part 13**

Weight control products and programs, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Emily H. Rock,

Secretary.

[FR Doc. 85-26306 Filed 11-5-85; 8:45 am]

BILLING CODE 5750-01-M

**SECURITIES AND EXCHANGE COMMISSION****17 CFR Part 200**

[Release No. 34-22585]

**Records Services, Fee Schedule and Designation of Service Contractor**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Adoption of rule amendments.

**SUMMARY:** The Securities and Exchange Commission announces revisions to § 200.80e Appendix E, which sets forth the schedule of fees for records services and designates the service contractor to provide copies of public documents filed with the Commission.

**EFFECTIVE DATE:** November 6, 1985.

**FOR FURTHER INFORMATION CONTACT:** Jonathan G. Katz, Director, Office of Consumer Affairs and Information Services, Telephone: (202) 272-7440.

**SUPPLEMENTARY INFORMATION:** On May 20, 1985, the Commission awarded a contract for microfilm production and dissemination of the Commission's public documents to Bechtel Information Services. Bechtel will provide the microfiche beginning October 1, 1985. This rule change designates Bechtel to replace the prior contractor, Disclosure Partners, and reflects changes in the fees charged for services.

The Commission finds, in accordance with the Administrative Procedure Act ("APA") (15 U.S.C. 553(b)(3)(A)) that this amendment relates solely to agency organization, procedures, or practices. Therefore, notice and public procedure, and thirty days prior publication before the rule is effective, are not required pursuant to the APA.

<sup>1</sup> Copies of the Complaint and the Decision and Order are filed with the original document. Copies of all exhibits filed with this document may be obtained from the Public Reference Branch, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, D.C.



**List of Subjects in 17 CFR Part 200**

Administration practice and procedure, Freedom of Information, Privacy, Securities.

**Statutory Basis and Text of Amendment**

Pursuant to the Securities Exchange Act of 1934 and particularly Section 23(a) thereof, 15 U.S.C. 78w(a), the Commission amends § 200.80e of Title 17, Chapter II, of the Code of Federal Regulations as follows:

**PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS**

1. The authority citation for PART 200 Subpart D continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, 15 U.S.C. 77s, 78w, 79t, 77ss, 80a-37, 80b-11.

2. Section 200.80e is amended by revising the paragraphs captioned "Regular service", "Priority service", "Watching service", "Public reference copying facilities" and "Subscription services and microfiche copies" to read as follows:

**§ 200.80e Appendix E—Schedule of fees for records services.**

*Regular service.* Hard (facsimile) copies of original hard copies, or from microfiche accessible to the contractor, will be shipped within seven calendar days after order and material are received by the contractor—each page—\$0.10. (Delivery costs are additional; applicable sales taxes are included.)

*Priority service.* Hard (facsimile) copies of originals or microfiche or other hard copies received by the Contractor by the close of the business day will be shipped by the close of business of the following day exclusive of weekends or holidays—each page—\$0.30. (Delivery costs and sales tax, where applicable, are additional.)

*Watching service.* Hard (facsimile) whole copies of customer-specified original or originals received by the contractor for filming as part of the ordinary maintenance of the contractor's master film file will be shipped by 4 p.m. of the day following contractor receipt of the original(s), exclusive of weekends or holidays—each page—\$0.30. (Delivery costs and applicable sales taxes are additional.)

*Public reference copying facilities.* In addition to the demand order facsimile copying services described above, the service contractor maintains customer operated paper-to-paper and fiche-to-paper copies in the public reference rooms of the Commission in Washington, D.C., New York City and Chicago. These machines can be used to make immediate copies of material available for inspection in those offices at a cost of \$0.15 per page. (Sales taxes, when applicable,

are additional.) The service contractor will also make paper copies on a highspeed fiche-to-paper copier from fiche retrieved by customers from film located in the Washington, D.C. reference room. The onsite service is intended to provide to the extent possible 5-minute demand service. The cost is \$0.20 per page plus applicable sales taxes.

*Subscription services and microfiche copies.* The contractor offers certain paper or 24X microfiche subscription services pursuant to the contract. The microfiche copies (24X reduction, 60 frames, titled and indexed) and paper copies are offered through a variety of subscription and demand order services. The cost of subscription services varies according to the type of service and volume. Packages currently on microfiche and on paper include registration statements and prospectuses under the Securities Act of 1933, registration and listing applications under the Securities Exchange Act of 1934, annual reports to shareholders, definitive proxies and information statements, tender offers and acquisition reports, and filings on Forms 6-K, 8-K, 10-Q, 10-K, 20-F, and N-SAR, under the Securities Exchange Act of 1934 and the Investment Company Act of 1940. Subscriptions may be for specified documents or in various combinations and groupings and may be specified either by company name or by major stock exchanges.

The contractor supplying these services will supply information and price lists upon request. Please address requests for information and all orders for subscription services, priority and watching services, and microfiche copies to: Bechtel Information Services, 15740 Shady Grove Road, Gaithersburg, MD 20877-1454 (Telephone; toll free 1-800-231-DATA or (301) 258-4300.)

Dated: October 31, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-26424 Filed 11-5-85; 8:45 am]

BILLING CODE 8010-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Part 73**

[Docket No. 84C-0298]

**Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additives for Coloring Contact Lenses**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use in coloring contact lenses of the colored polymeric reaction products formed by chemically bonding certain dyes, used singly or in combination, with poly(hydroxyethyl methacrylate).

This action responds to a petition filed by Coopervision, Inc.

**DATES:** Effective December 9, 1985, except as to any provisions that may be stayed by the filing of proper objections; objections by December 6, 1985.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:****I. Introduction**

In a notice published in the Federal Register of September 26, 1984 (49 FR 37850) and a correction published in the Federal Register of November 30, 1984 (49 FR 47114), FDA announced that a color additive petition (CAP 4C0187) had been filed by Coopervision, Inc., 2801 Orchard Parkway, San Jose, CA 95134, proposing that the color additive regulations be amended to provide for the safe use of the colored polymeric reaction products formed by chemically bonding certain dyes, used singly or in combination, with poly(hydroxyethyl methacrylate) for coloring contact lenses. The dyes are C.I. Reactive Red 11 [5-((4,6-dichloro-1,3,5-triazin-2-yl)amino)-4-hydroxy-3-((1-sulfo-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, trisodium salt] (CAS Reg. No. 12226-08-3), C.I. Reactive Yellow 86 [1,3-benzenedisulfonic acid, 4-((5-aminocarbonyl-1-ethyl-1,6-dihydro-2-hydroxy-4-methyl-6-oxo-3-pyridinyl)azo)-6-((4,6-dichloro-1,3,5-triazin-2-yl)amino)-, disodium salt] (CAS Reg. No. 61951-88-8), and C.I. Reactive Blue 163 [triphenodioxazinedisulfonic acid, 6,13-dichloro-3, 10-bis((4-((4,6-dichloro-1,3,5-triazin-2-yl)amino)sulfonyl)amino)-, tetrasodium salt] (CAS Reg. No. 72847-56-4). The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

The colored polymeric reaction products that are the subject of this petition are formed when one or more of the dyes are bonded with poly(hydroxyethyl methacrylate) on the front surface of a contact lens to form a thin layer of colored polymeric material on that surface. This polymeric material colors the contact lens.



## II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 to the act (Pub. L. 94-295), Congress mandated the listing of color additives for use in medical devices when the color additive comes in direct contact with the body for a significant period of time (21 U.S.C. 376(a)). As explained in the Federal Register of January 4, 1984 (49 FR 372), the polymeric reaction products of bonding reactive dye to poly(hydroxyethyl methacrylate) are called "poly(hydroxyethyl methacrylate)-dye copolymers" in § 73.3121 (21 CFR 73.3121). These reaction products are color additives within the meaning of the act (21 U.S.C. 321(t)) because they are substances made by a process of synthesis or similar artifice, and because they are capable of imparting color to food, drugs, cosmetics, or the human body if added or applied thereto. For the color additives considered here, the reactive dyes are merely starting materials. In the reaction process that occurs in bonding the reactive dye to the poly(hydroxyethyl methacrylate), the reactive dye ceases to exist as a separate entity.

The use of poly(hydroxyethyl methacrylate)-dye copolymers as color additives in contact lenses is subject to regulation under the act. The lenses that have this colored polymeric material on their front surfaces are intended to be placed on the eye for several hours a day each day for 1 year or more. Thus, these color additives will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive presented in the petition now before the agency is subject to the statutory listing requirement.

## III. Safety Evaluation

The petitioner submitted various toxicity studies to establish that the color additives created by bonding C.I. Reactive Red 11, C.I. Reactive Yellow 86, and C.I. Reactive Blue 163 to poly(hydroxyethyl methacrylate) are safe for use in contact lenses.

In a 21-day ocular irritation study in rabbits using contact lenses tinted with the color additives, and a 72-hour primary ocular irritation test in rabbits using extracts of tinted lenses, neither the lenses containing the color additives nor extracts from the lenses caused ocular irritation under conditions of the tests. In a 96-hour systemic toxicity test in mice using extracts of tinted lenses, no toxic responses were noted under conditions of the test. In agar overlay cytotoxicity tests, using samples of

lenses tinted with the color additives, no toxic responses were noted under conditions of the tests.

The agency has also reviewed data regarding the toxicity of potential impurities, such as unbonded reactive dye starting materials, remaining in the lens. The reactive dye starting materials, being of lower molecular weight than the polymeric color additive, would be more readily absorbed into the body than the color additive and would thus be expected to show a greater toxic effect. Unbonded reactive dyes were tested for cytotoxicity by the agar overlay method in the form of lenses tinted on their surface with saturated solutions of the C.I. reactive dyes. The dyes were not bonded to the lens material and therefore were available to migrate out of the lens. No toxic response to the unbonded reactive dyes was observed under conditions of the test.

FDA also reviewed data from a thin layer chromatography study. These data revealed that unbonded raw dye starting materials are readily hydrolyzed to the nonreactive form when heated in aqueous solution, as occurs during the tinting process.

FDA has concluded that, as a worst case, any material migrating from the color additives in the lens would not pose a greater safety concern than if the unbonded, hydrolyzed dyes were placed in the lens and migrated into the eye over a 1-year period. The agency finds, based upon the information submitted in the petition, that a maximum of 14 to 37 micrograms of hydrolyzed dye (depending on the color tint of the lens) would be present in each lens. Therefore, the estimated worst case exposure from two lenses would be 80 to 200 nanograms per day for both eyes, depending on the reactive dye used.

The petitioner conducted cytotoxicity studies in which serial dilutions of hydrolyzed dyes were applied directly to L-929 mouse fibroblast cells. For the color of lens (brown) containing the greatest total amount of hydrolyzed dyes, no cytotoxic effect was observed at a concentration approximately 4,600 times the concentration that would be in the eyes if 200 nanograms migrated into the eyes per day.

## IV. Certification Considerations

Based on the relevant data, FDA concludes that the safety margins for use of these color additives are large enough to rule out any need for imposing a limitation on the amount of the additives that may be present on the lens, beyond the limitation that only that amount necessary to accomplish the intended technical effect may be used.

Finally, on the basis of factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of the color additives is not necessary for the protection of the public health.

## V. Conclusion

Based on the data in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the proposed use of the reaction products formed by bonding C.I. Reactive Red 11, C.I. Reactive Yellow 86, and C.I. Reactive Blue 163 to poly(hydroxyethyl methacrylate) for coloring contact lenses, and that these color additives are safe for their intended use. Based on these data, the agency also concludes that these color additives are suitable for their intended use.

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31(a).

## VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 6, 1985, submit to the Dockets Management Branch (address above) written objections thereto. Objections shall show how the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable,



and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objection shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Notice of the filing of objections or lack thereof will be announced by publication in the *Federal Register*.

#### List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 73 is amended as follows:

#### PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR Part 73 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. In § 73.3121 by removing the word "and" before, and the period at the end of, paragraph (a)(6), and by adding new paragraph (a)(7) through (9) to read as follows:

#### § 73.3121 Poly(hydroxyethyl methacrylate)-dye copolymers.

(a) \* \* \*

(7) C.I. Reactive Red 11 [5-[(4,6-dichloro-1,3,5-triazin-2-yl)amino]-4-hydroxy-3-[(1-sulfo-2-naphthalenyl)azo]-2,7-naphthalenedisulfonic acid, trisodium salt] (CAS Reg. No. 12226-08-3);

(8) C.I. Reactive Yellow 86 [1,3-benzenedisulfonic acid, 4-[(5-aminocarbonyl-1-ethyl-1,6-dihydro-2-hydroxy-4-methyl-6-oxo-3-pyridinyl)azo]-6-(4,6-dichloro-1,3,5-triazin-2-yl)amino]-, disodium salt] (CAS Reg. No. 61951-86-8); and

(9) C.I. Reactive Blue 163 [triphenyldioxazinedisulfonic acid, 6,13-dichloro-3,10-bis[4-[(4,6-dichloro-1,3,5-triazin-2-yl)amino] sulfophenyl]amino]-,

tetrasodium salt] (CAS Reg. No. 72847-56-4).

Dated: October 30, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-26414 Filed 11-5-85; 8:45 am]

BILLING CODE 4160-01-M

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Parts 201, 203 and 234

[Docket No. N-85-1560; FR-2152]

#### Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

**ACTION:** Notice of revisions to FHA maximum mortgage limits for high-cost areas.

**SUMMARY:** This document amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by adding two areas, further increasing the limits of two previously designated high-cost areas and restoring an area that was inadvertently omitted from the updated list published in the *Federal Register* of July 24, 1985 (50 FR 30154). Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

**EFFECTIVE DATE:** November 6, 1985.

#### FOR FURTHER INFORMATION CONTACT:

For single family: Brian Chappelle, Director, Single Family Development Division, Room 9270, Telephone (202) 755-8720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160, Telephone, (202) 755-8880; 451 Seventh Street, SW., Washington, DC 20410. (Telephones are not toll-free numbers.)

#### SUPPLEMENTARY INFORMATION:

##### Background

The National Housing Act (NHA) (12 U.S.C. 1710-1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums,

manufactured home lots, and manufactured homes, combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Act of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam, and Hawaii.

The Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, November 30, 1983) (1983 Act) further amended HUD's insuring authority. Of particular interest here are (1) the authorization to insure condominiums in high-cost areas at the same levels as the high-cost limits for one-family residence insured under section 203(b) of the National Housing Act; and (2) the authorization to increase maximum loan limits under the Title I loan insurance program for combination manufactured home and lot loans and for individual lot loans in high-cost areas, so long as the percentage increase in the maximum loan limit does not exceed the percentage increase made to a one-family residence in the area authorized under section 203(b) of the NHA.

The Department implemented these provisions of the 1983 Act in related documents published in the *Federal Register* on April 11, 1984 (see 49 FR 14332, 14335, 14336), effective May 22, 1984. These documents also amended the Department's rules to codify the procedure of announcing high-cost mortgage limits for single family residences, condominiums, combination manufactured homes and lots and manufactured home lots by notice in the *Federal Register* (see April 11, 1984 documents, amending 24 CFR 201.1504, 203.18b, 203.29, 234.27, and 234.49). In addition, the documents codified the procedure whereby a party may request an alternative mortgage limit (see the same sections cited above).

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination



manufactured homes and lots and individual lots insured in Alaska, Guam, and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area."

On December 8, 1984 (49 FR 47657), May 8, 1985 (50 FR 19341), and July 24, 1985 (50 FR 30154), the Department published amendments to the "high-cost" mortgage amounts that added additional areas and further increased the limits of several previously designated high-cost areas.

#### **This Document**

Today's document adds the following jurisdictions to the listing of high-cost areas: Burleigh County, North Dakota and Morton County, North Dakota.

The Department is also further increasing the limits for Richmond, VA MSA and for York County, Virginia.

In addition, the limits for El Paso County, Colorado, which were inadvertently omitted from the updated list published in the **Federal Register** on July 24, 1985 (50 FR 30154), are now being restored to the list.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists any changes for single family residences insured under sections 203(b) and 234(c) of the National Housing Act.

Accordingly, the Commissioner hereby amends the list of high-cost mortgage limits by adding two jurisdictions, further increasing the limits for the Richmond, VA MSA and for York County, Virginia, and restoring an area to the list as set forth in Part II of the following Table:

#### **National Housing Act High-Cost Mortgage Limits**

##### **I. Title I: Method of Computing Limits**

**A. Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam, and Hawaii):** To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list

by 80. For example, Stafford County, VA, has a one-family limit of \$90,000. The combination home and lot loan limit for Stafford County is  $\$90,000 \times .80$  or \$72,000.

**B. Section 2(b)(1)(E). Lot only (excluding Alaska, Guam, and Hawaii):** To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Stafford County, VA, has a one-family limit of \$90,000. The lot only loan limit for Stafford County is  $\$90,000 \times .20$ , or \$18,000.

**C. Section 2(b)(2). Alaska, Guam, and Hawaii limits:** The maximum dollar limits for Alaska, Guam, and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1). Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes, \$56,700. ( $\$40,500 \times 140\%$ ).
2. For combination manufactured homes and lots: \$75,600. ( $\$54,400 \times 140\%$ ).
3. For lots only: \$18,900. ( $\$13,500 \times 140\%$ ).



## II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

## REGION III.—HUD FIELD OFFICE: RICHMOND OFFICE

Market area designation and local jurisdictions	Mortgage limits			
	1-family and condominium unit	2-family	3-family	4-family
Washington, DC-MD-VA-MSA:				
Stafford County, VA	\$90,000	\$101,300	\$122,650	\$142,650
Richmond-Petersburg, VA MSA:				
Charles City County	72,450	81,550	99,100	114,350
Chesterfield County				
Colonial Heights City				
Dinwiddie County				
Goochland County				
Hanover County				
Henrico County				
Hopewell City				
New Kent County				
Petersburg City				
Powhatan County				
Prince George County				
Richmond City				
Norfolk-VA Beach-Newport News, VA MSA:				
Chesapeake City	78,500	88,450	107,450	124,000
Gloucester County				
Hampton City				
James City County				
Newport News City				
Norfolk City				
Portsmouth City				
Suffolk City				
Virginia Beach City				
Williamsburg City				
York County	90,000	101,300	122,650	142,650

## REGION VIII.—HUD FIELD OFFICE: DENVER OFFICE

Market area designation and local jurisdictions	Mortgage limits			
	1-family and condominium unit	2-family	3-family	4-family
Denver, CO PMSA:				
Adams County	\$90,000	\$101,300	\$122,650	\$142,650
Arapahoe County				
Denver County				
Douglas County				
Jefferson County				
Boulder-Longmont, CO PMSA:				
Boulder County, CO	90,000	101,300	122,650	142,650
Colorado Springs, CO MSA:	80,750	90,950	110,500	127,500
El Paso County				
State of Colorado:				
Elbert County	63,900	94,500	114,850	132,500
Grand County	80,750	90,950	110,500	127,500
Routt County	90,000	101,300	122,650	142,650
Teller County	80,750	90,950	110,500	127,500
Other Areas	71,800	80,900	98,300	113,400

## HUD Field Office: Fargo Office

Fargo-Moorhead, ND-MN MSA:				
Cass County, ND	\$77,900	\$87,750	\$106,600	\$123,000
Other Areas:				
Burleigh County	70,750	79,700	96,850	111,750
Morton County	70,750	79,700	96,850	111,750

Dated: October 29, 1985.

Silvio J. DeBartolomeis,

Acting General Deputy Assistant Secretary  
for Housing—Deputy Federal Housing  
Commissioner.

[FR Doc. 85-26317 Filed 11-5-85; 8:45 am]

BILLING CODE 4210-27-M



## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1, 5, 5h, and 602

[T.D. 8062]

## Credit for the employment of certain new employees

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under sections 51 and 381 of the Internal Revenue Code of 1954, relating to a credit for the employment of certain new employees (the "targeted jobs credit"). The amount of the targeted jobs credit that an employer is entitled to is determined under section 51 and these final regulations. These final regulations also provide rules concerning the extent to which an acquiring corporation must take into account items that relate to the targeted jobs credit determined under section 51 in the case of a transaction subject to section 381(a). Changes to the applicable law were made by the Revenue Act of 1978, the Technical Corrections Act of 1979, the Economic Recovery Tax Act of 1981, the Tax Equity and Fiscal Responsibility Act of 1982, the Technical Corrections Act of 1982, and the Tax Reform Act of 1984. These final regulations provide the public with the guidance needed to comply with the law as amended by these Acts.

**DATES:** The amendments are effective after December 31, 1978, and apply to certain wages of individuals who begin work for an employer before January 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** John G. Schmalz of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224. Attention: CC:LR:T (202-566-3516, not a toll-free call).

**SUPPLEMENTARY INFORMATION:****Background**

Proposed amendments to the Income Tax Regulations (26 CFR Part 1) were published in the *Federal Register* on November 23, 1983. Those amendments were proposed to conform the regulations to section 321 of the Revenue Act of 1978 (92 Stat. 2830), section 103(a)(6) of the Technical Corrections Act of 1979 (94 Stat. 209), section 261 of the Economic Recovery Tax Act of 1981 (95 Stat. 260), section 233 of the Tax

Equity and Fiscal Responsibility Act of 1982 (96 Stat. 501), and section 102(l) of the Technical Corrections Act of 1982 (96 Stat. 2374).

Approximately 20 written comments were received in response to the notice of proposed rulemaking. A public hearing was held on February 29, 1984. After consideration of all the public comments, the proposed amendments are adopted as revised by this Treasury decision.

In addition, these final regulations also reflect amendments made to section 51 of the Internal Revenue Code by sections 474(p), 712(n), 1041, 2638(b), and 2663(j)(5)(A) of the Tax Reform Act of 1984 (98 Stat. 837, 955, 1042, 1144, and 1171).

**In General**

In general, a taxpayer may claim a targeted jobs credit for amounts paid or incurred after December 31, 1978, for taxable years ending after that date, to members of a targeted group. Generally, to qualify for the credit, the amounts must be paid or incurred to members of a targeted group first hired after September 26, 1978. However, amounts paid or incurred after December 31, 1978, to a vocational rehabilitation referral hired before September 27, 1978, may qualify for the credit if a credit under section 44B (as in effect prior to enactment of the Revenue Act of 1978) was claimed for the individual by the taxpayer for a taxable year beginning before January 1, 1979.

**Amount of Credit**

Except in the case of a qualified summer youth employee, the amount of the targeted jobs credit for the taxable year is 50 percent of the qualified first-year wages plus 25 percent of the qualified second-year wages. Generally, qualified first-year wages are the first \$6,000 of wages paid or incurred by the employer during the taxable year to an individual who is a member of a targeted group for services rendered during the 1-year period beginning with the day the individual begins work for the employer. Qualified second-year wages are the first \$6,000 of wages paid or incurred by the employer during the taxable year to an individual who is a member of a targeted group for services rendered during the 1-year period beginning on the day after the last day of the qualified first-year wages period. For taxable years of the employer beginning before January 1, 1982, qualified first-year wages are further limited to 30 percent of the aggregate

unemployment insurance wages paid by the employer during the calendar year ending in such taxable year.

Special rules apply to wages that are paid to employees who are qualified summer youth employees. In general, an employer is entitled to a credit equal to 85 percent of not more than \$3,000 of wages paid to a qualified summer youth employee during a 90-day period between May 1 and September 15.

**Members of a Targeted Group**

An individual is a member of a targeted group if the individual is certified as a qualified summer youth employee, a vocational rehabilitation referral, an economically disadvantaged youth, an economically disadvantaged Vietnam-era veteran, an SSI recipient, a general assistance recipient, a youth participating in a cooperative education program, an economically disadvantaged ex-convict, an eligible work incentive employee, or an involuntarily terminated CETA employee. The first category was added by the Tax Equity and Fiscal Responsibility Act of 1982. The last two categories were added by the Economic Recovery Tax Act of 1981. The Economic Recovery Tax Act also amended the definition of a youth participating in a cooperative education program to require the individual to be also a member of an economically disadvantaged family.

The regulations provide rules and definitions relating to the eligibility requirements for several of the targeted groups. In the case of youths participating in a cooperative education program, the regulations define the term "program of vocational education" (a component in the definition of qualified cooperative education program) in accordance with the definition of that term in the Vocational Education Act of 1963 and the Department of Education regulations thereunder because the legislative history of the Revenue Act of 1978 indicates that the term "qualified cooperative education program" in section 51(d)(8) is similar to that term as used in the Vocational Education Act.

The regulations also provide guidance on the issue of second certifications with respect to employees who continue to work for the same employer after the employee no longer meets the requirements for membership in the targeted group for which the employee was originally certified. For example, a qualified summer youth employee may continue to work for the same employer



after the end of the ninety-day period described in section 51(d)(12)(B)(iii) and may then qualify as an economically disadvantaged youth. Similarly, a youth certified as participating in a qualified cooperative education program may no longer be actively participating in the program, but may then qualify as an economically disadvantaged youth. The regulations provide that the timely certification rules do not apply to the second certification if the first certification was timely. The regulations also provide that, for purposes of the eligibility requirements, the "hiring date" will be defined as the day the individual is certified for the second targeted group. Thus, whether an individual meets the age requirement for the second targeted group will be determined as of the date of certification rather than the original hiring date.

In general, the State employment security agency is the agency responsible for certifying an individual as a member of a targeted group. In the case of youths participating in a qualified cooperative education program, the school offering the program must certify the individual as a member of that targeted group. A school may satisfy the certification requirement by using Form 6199. In either case, a certificate may be revoked if it is discovered that the information supplied by the individual for purposes of issuing the certificate was incorrect or false.

Furthermore, the amendments made by the Economic Recovery Tax Act have the effect of making retroactive certifications invalid unless the employer has requested in writing a certification before the employee began work. Therefore, an individual will not be treated as a member of a targeted group unless, before the day the individual begins work for the employer, the employer receives a certification from the designated local agency or school, or has requested in writing a certification. However, the Tax Equity and Fiscal Responsibility Act of 1982 amended this rule with respect to individuals who begin work for the employer after May 11, 1982, so that certifications will be valid if requested or received on or before the day the individual begins work for the employer. Transitional rules apply with respect to certain employees. In addition, the Tax Reform Act of 1984 amended the timely certification rules to extend the deadline for requesting a certification to 5 days after the individual begins work for the employer if the individual has received a "voucher" (i.e., a preliminary determination of targeted group

eligibility) on or before the day the individual begins work for the employer.

#### Public Comments and Changes Made in Response to Public Comments

Several commentators objected to two aspects of the proposed regulations relating to the targeted group "youths participating in qualified cooperative education programs." First, they objected to the rule in § 1.51-1(c)(2)(iii) of the proposed regulations which provided that the requirement in section 51(d)(8)(B) that both the education and the work experience contribute to the student's education and employability is not met unless the employment is related to the occupation for which the student is in training. The Treasury Department has carefully considered the public comment on this issue, but continues to believe that the proposed rule is correct. Therefore, no substantive change is made.

Commentators also objected to the conclusion in example (9) of the proposed regulations that a student who worked for an employer during the summer vacation did not meet the "activity pursuing" requirement in section 51(d)(8)(A)(iii) during the summer since the cooperative education program that the student was enrolled in did not continue during the summer. The final regulations clarify that this is the case only if the qualified cooperative education program of the school is not continued by the school during the summer vacation. Whether the program continues during the summer is determined by reference to the written agreement between the employer and the school. If the school does continue the program throughout the summer, the student will be considered to be actively pursuing the program regardless of whether the student attends classes during the summer.

#### General Assistance Recipient

The regulations also clarify, in response to public comment, that in order to be considered a general assistance recipient (within the meaning of section 51(d)(6)) it is not necessary that the individual be the individual to whom the assistance check is issued. It is sufficient that the individual be a member of the same assistance unit (within the meaning of 45 CFR 205.40(a)(1)) as the person receiving the assistance.

Several other comments in the nature of legislative suggestions were made by certain commentators. Although considered, changes were not made since these comments did not pertain to the regulations.

#### Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that the final regulations herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

#### Paperwork Reduction Act

The collection of information contained in these final regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

#### Drafting Information

The principal author of these final regulations is John G. Schmalz of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

#### List of Subjects

##### 26 CFR 1.0-1 through 1.58-8

Income taxes, Tax liability, Tax rates, Credits.

##### 26 CFR Part 5

Income taxes, Revenue Act of 1978.

##### 26 CFR Part 5h

Income taxes, reporting and recordkeeping requirements.

##### 26 CFR Part 602

Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1, Part 5, Part 5h, and Part 602 are amended as follows:

#### Income Tax Regulations

##### PART 1—[AMENDED]

**Paragraph 1.** The authority for Part 1 continues to read in part:



Authority: 26 U.S.C. 7805. \* \* \* Section 1.51-1 (g) also issued under 26 U.S.C. 51(j); § 1.361(c)(26)-1 also issued under 26 U.S.C. 381(c)(26).

**Par. 2.** There is inserted immediately after § 1.50B-1 the following new § 1.51-1 to read as follows:

**§ 1.51-1 Amount of credit.**

(a) *Determination of amount.*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, the amount of the targeted jobs credit for purposes of section 38 (formerly designated section 44B) for the taxable year equals 50 percent of the qualified first-year wages (minus any qualified first-year wages paid to individuals while such individuals are qualified summer youth employees) plus 25 percent of the qualified second-year wages.

(2) *Special rule for employment of qualified summer youth employees.* In the case of an employer who pays or incurs qualified wages after April 30, 1983, to a qualified summer youth employee beginning work for the employer after such date, the amount of the targeted jobs credit for the taxable year is equal to the amount determined under paragraph (a)(1) of this section plus an amount equal to 85 percent of the first \$3,000 of qualified wages paid to each qualified summer youth employee during the taxable year. Such wages must be attributable to services tendered by the qualified summer youth employee during any 90-day period beginning on or after May 1 and ending on or before September 15.

(3) *Limitation.* See section 38(c) for rules limiting the amount of the credit to a percentage of the amount of the taxpayer's net tax liability.

(b) *Definitions.*—(1) *Qualified wages.* The term "qualified wages" means wages (as defined in paragraph (b)(4)) paid or incurred by the employer during the taxable year to individuals who are members of a targeted group (within the meaning of section 51(d)).

(2) *Qualified first-year wages.*—(i) *General rule.* Except in the case of qualified summer youth employees, the term "qualified first-year wages" means the first \$6,000 of wages (as defined in paragraph (b)(4) of this section) attributable to service rendered by a member of a targeted group during the 1-year period beginning with the day the individual first begins work for the employer. In the case of a vocational rehabilitation referral (as defined in section 51(d)(2)) who begins work for the employer before July 19, 1984, the one-year period begins with the day the individual begins work for the employer on or after the beginning of such

individual's rehabilitation plan. However, with the exception of vocational rehabilitation referrals for whom the employer claimed a credit under section 44B (as in effect prior to enactment of the Revenue Act of 1978) for a taxable year beginning before January 1, 1979, members of a targeted group who are first hired after September 26, 1978, and before January 1, 1979, will be treated as if they first began work for the employer on January 1, 1979. The date on which the wages are paid is not determinative of whether the wages are first-year wages; rather, the wages must be attributed to the period during which the work was performed. See paragraph (f)(1) of this section for an additional limitation on the term "qualified first-year wages". (See examples (1), (2), (3), (4), (5), and (6) in paragraph (j) of this section for examples illustrating the application of the rules in this paragraph (b)(2)).

(ii) *Special rule for qualified summer youth employees.* In the case of a qualified summer youth employee, qualified first-year wages for purposes of the 85 percent credit referred to in paragraph (a)(2) of this section include only wages attributable to services rendered by a qualified summer youth employee during any 90-day period beginning on or after May 1 and ending on or before September 15. If the individual is retained by the employer after the 90-day period and recertified as a member of another targeted group, the term "qualified first-year wages" for purposes of the 50 percent credit described by section 51(a)(1) has the meaning assigned that term in paragraph (b)(2)(i) of this section except that the \$6,000 limitation for qualified first-year wages shall be reduced by wages up to, but not more than, \$3,000 attributable to services rendered during the 90-day period.

(3) *Qualified second-year wages.* The term "qualified second-year wages" means the first \$6,000 of wages attributable to services rendered by a member of a targeted group, other than a qualified summer youth employee, during the 1-year period beginning on the day after the last day of the period for qualified first-year wages. The date on which the wages are paid is not determinative of whether the wages are second-year wages; rather, the wages must be attributed to the period during which the work was performed.

(4) *Wages.*—(i) *General rule.* Except as otherwise provided in paragraph (b)(4) (ii) and (iii) of this section, the term "wages" shall only include amounts paid or incurred after December 31, 1978, for taxable years ending after December 31, 1978. For purposes of this

section, the term "wages" has the meaning assigned such term by section 3306(b) (determined without regard to any dollar limitation contained in such subsection).

(ii) *Special rules.* In the case of agricultural labor or railway labor, the term "wages" means unemployment insurance wages within the meaning of subparagraph (A) or (B) of section 51(h)(1). The term "wages" shall not include any amounts paid or incurred by an employer for any pay period to any individual for whom the employer receives federally funded payments for on-the-job training for such individual for such pay period. (See example (7) in paragraph (j) of this section.) The amount of wages which would otherwise be qualified wages under this section with respect to an individual for a taxable year shall be reduced by an amount equal to the amount of payments made to the employer (however utilized by such employer) with respect to such individual for such taxable year under a program established under section 414 of the Social Security Act. In addition, the term "wages" shall not include any amount paid or incurred by the employer in a taxable year beginning before January 1, 1982, to an individual with respect to whom the employer claims a credit under section 40 (relating to expenses of work incentive programs). For youths participating in a qualified cooperative education program:

(A) Section 3306(c)(10)(C) (relating to the definition of employment for certain students) does not apply in determining wages under this section; and

(B) The term "wages" shall include only those amounts paid or incurred by the employer that are attributable to services rendered by the individual while he or she meets the conditions specified in section 51(d)(8)(A). For purposes of the preceding sentence, an employee who met the requirement in section 51(d)(8)(A)(iv), dealing with economically disadvantaged status, when hired, shall be deemed to continuously meet the requirement in section 51(d)(8)(A)(iv) during the time the employee is in the cooperative education program. See also paragraph (e) of this section for rules relating to the exclusion of wages paid to certain individuals.

(iii) *Termination.* The term "wages" shall not include any amount paid or incurred to an individual who begins work for the employer after December 31, 1985.

(5) *Special rule for eligible work incentive employees.* In the case of an eligible work incentive employee (as



defined in § 1.51-1(c)(4)), this paragraph (b) shall be applied for taxable years beginning after December 31, 1981, as if such employee had been a member of a targeted group for taxable years beginning before January 1, 1982. (See example (8) in paragraph (j) of this section.)

(c) *Members of targeted groups*—(1) *In general.* An individual is a member of a targeted group if the individual is certified as (i) a vocational rehabilitation referral, (ii) an economically disadvantaged youth, (iii) an economically disadvantaged Vietnam-era veteran, (iv) an SSI recipient, (v) a general assistance recipient, (vi) a youth participating in a cooperative education program, (vii) an economically disadvantaged ex-convict, (viii) an eligible work incentive employee, (ix) a qualified summer youth employee, or (x) an involuntarily terminated CETA employee. Except as provided below, see section 51(d) of this section for a definition of these groups. See paragraph (d) of this section for rules concerning the certification of individuals as members of one of these targeted groups.

(2) *Youths participating in a qualified cooperative education program*—(i) *Student requirements.* For an individual to qualify as a youth participating in a qualified cooperative education program, the individual must meet each of the following conditions (A) through (D)—

(A) The youth must have attained the age of 16 but not 20. (An individual reaching 19 will be treated as a youth participating in a qualified cooperative education program only for wages paid or incurred after November 26, 1979.)

(B) The youth must not have graduated from a high school or vocational school.

(C) The youth must be enrolled in and actively pursuing a qualified cooperative education program (as defined in paragraph (c)(2)(iii) of this section).

(D) With respect to wages paid or incurred after December 31, 1981, the youth must be a member of an economically disadvantaged family when initially hired.

(ii) *Economically disadvantaged family.* See section 51(d)(11) for the rules relating to the determination of whether an individual is a member of an economically disadvantaged family.

(iii) *Qualified cooperative education program.* The term "qualified cooperative education program" means a program of vocational education for individuals who (through written cooperative arrangements between a qualified school and one or more employers) receive instruction

(including required academic instruction) by alternation of study in school with a job in any occupational field (but only if these two experiences are planned by the school and employer so that each contributes to the student's education and employability). See section 51(d)(8)(C) for the definition of a "qualified school." For purposes of this paragraph, the term "program of vocational education" means an organized educational program which is directly related to the preparation of individuals for employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. An "organized educational program" means only instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training. The student's employment contributes to his or her education and employability only if it is related to the occupation, or a cluster of closely related occupations, for which the student is in training in school. However, the student's employment need not be directly related to or in the same technical field as the training the student receives in school. For example, a student studying carpentry does not have to work as a carpenter for the program to constitute a "qualified cooperative education program." The program will qualify if, for example, the student works at a hardware store because the student's work would familiarize the student with the materials and tools used by carpenters. The program would not qualify, however, if the student works at a restaurant and generally performs tasks in such employment not related to carpentry.

(iv) *Actively pursuing.* For purposes of this paragraph (c)(2), a youth will not be considered to be "actively pursuing" a school's qualified cooperative education program (within the meaning of paragraph (c)(2)(iii) of this section) during summer vacation unless that school program continues during the summer vacation. Whether the school program continues during the summer vacation will be determined by examining the written agreement between the school and the employer. Thus, if a written agreement specifically covers the summer vacation period and provides for a significant degree of involvement by school personnel to provide supervision for the students in the program during that period, the school program will be considered to continue during the summer, regardless of whether classes are held during the vacation period.

(3) *General assistance recipients.* In order for an individual to qualify as a general assistance recipient, the individual, or another member of the assistance unit (within the meaning of 45 CFR 205.40(a)(1)) that the individual is a member of, must receive assistance for a period of not less than 30 days ending within the preemployment period (as defined in section 51(d)(13)) from a qualified general assistance program. A qualified general assistance program is a program of a State or a political subdivision of a State that the Secretary (after consultation with the Secretary of Health and Human Services) has designated as providing general assistance (or similar assistance) which is based on need and consists of money payments or voucher or scrip. For purposes of the preceding sentences, a program qualifying as a general assistance program by reason of non-cash assistance (i.e., voucher or scrip) shall be so treated only with respect to amounts paid or incurred after July 1, 1982, to individuals beginning work for the employer after such date. For purposes of this subparagraph, the term "money" means cash or an instrument convertible into cash (e.g., a check).

(4) *Eligible work incentive employees.* An eligible work incentive employee means an individual who has been certified by the designated local agency (as defined in paragraph (d)(10) of this section) as—

(i) Being eligible for financial assistance under part A of title IV of the Social Security Act and as having continuously received such financial assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer, or

(ii) Having been placed in employment under a work incentive program established under section 432(b)(1) or 445 of the Social Security Act.

The provisions of this paragraph (c)(4) are effective with respect to taxable years of the employer beginning after December 31, 1981. (See paragraph (b)(5) of this section for a special rule relating to eligible work incentive employees.)

(5) *Involuntarily terminated CETA employees*—(i) *In general.* An involuntarily terminated CETA employee is an individual who first began work for an employer after August 13, 1981, in taxable years of the employer ending after August 13, 1981, and is certified by the designated local agency (as defined in paragraph (d)(10) of this section) as having been involuntarily terminated after December 31, 1980, from employment financed in



whole, or in part, under a program under part D of title II or title VI of the Comprehensive Employment and Training Act.

(ii) *Termination.* Section 51(d)(10) and this paragraph (c)(5) shall not apply to any individual who begins work for the employer after December 31, 1982.

(d) *Certification—(1) General rule.* Except as otherwise provided in this paragraph, an individual shall not be treated as a member of a targeted group unless, on or before the day on which such individual begins work for the employer, the employer has received, or has requested in writing, a certification that the individual is a member of a targeted group from the designated local agency (as defined in paragraph (d)(10) of this section). In addition, the employer must receive a certification before the targeted jobs credit can be claimed. However, with respect to individuals who began work for the employer on or before May 11, 1982, the certification will be timely only if requested or received before the day the individual began work for the employer. In the case of a request in writing mailed via the United States Postal Service, the request shall be deemed to be made on the date of the postmark stamped on the cover in which such request was mailed to the designated local agency provided the request is mailed in accordance with the mailing requirements in § 301.7502-1(c) and delivered in accordance with the delivery requirements in § 301.7502-1(d). In the case of a deadline that but for this sentence would fall on a Saturday, Sunday, or a legal holiday, the deadline for making a timely request in writing for a certification or receiving a timely certification shall be the next succeeding day which is not a Saturday, Sunday, or legal holiday. (See section 7503 for the definition of "legal holiday.") See paragraph (d)(2) of this section for transitional rules applicable to certain employees who began work for the employer before September 26, 1981. See paragraph (d)(3) of this section for special rules applicable to cooperative education students and paragraph (d)(4) of this section for special rules applicable to eligible work incentive employees.

(2) *Timeliness of certification in the case of an individual to whom a written preliminary eligibility determination has been issued.* If on or before the day on which an individual begins work for the employer, such individual has received from a designated local agency (or other agency or organization designated pursuant to a written agreement with such designated local agency) a written preliminary

determination that such individual is a member of a targeted group, then such individual may be treated as a member of a targeted group if on or before the fifth day after the day such individual begins work for the employer such employer receives, or requests in writing, from the designated local agency a certification that such individual is a member of a targeted group. This paragraph (d)(2) only applies to individuals who begin work for the employer after July 18, 1984.

(3) *Transitional rules for certain employees who began work for the employer on or before September 26, 1981.* In the case of an individual, other than a cooperative education student, who began work for the employer before June 29, 1981, the employer must either receive, or request in writing, a certification before July 23, 1981. In the case of an individual, other than a cooperative education student, who began work for the employer after June 28, 1981, and on or before September 26, 1981, the employer must either receive, or request in writing, a certification before September 26, 1981.

(4) *Cooperative education students.* In the case of cooperative education students, the school administering the cooperative education program must issue the certification. Form 6199 is provided for this purpose. If the student begins work for the employer after September 26, 1981, see the general rule in § 1.51-1(d)(1) for the date when this certification must be received or requested. If the student begins work for the employer on or before September 26, 1981, the employer must receive the certification or request it in writing before September 26, 1981. In order for an employer to claim a credit on wages paid or incurred to a cooperative education student after December 31, 1981, the employer must receive or request in writing a determination that the student is a member of an economically disadvantaged family. A request for economic eligibility determination for a cooperative education student must be made in writing by the employer to the participating school. If the student begins work for the employer on or before September 26, 1981, the employer must receive or request in writing such determination before September 26, 1981. However, a request in writing on or after August 13, 1981, to a participating school for certification will be deemed to include a request for an economic eligibility determination. In addition, any certification issued by a school after August 13, 1981, will be deemed to be issued in response to a

request for certification which includes a request for an economic eligibility determination. The rule in the preceding sentence does not eliminate the requirement that the employer receive a certification that includes an economic eligibility determination in order to claim a credit for wages paid or incurred after December 31, 1981. If a certification issued by a school after August 13, 1984, does not contain an economic eligibility determination and the employer wishes to claim a credit for wages paid or incurred after December 31, 1981, the employer must receive a completed certification before the date on which the credit is claimed.

(5) *Eligible work incentive employees.* In the case of eligible work incentive employees, the employer must either receive, or request in writing, a certification within the time requirements of paragraph (d) (1), (2), or (3) of this section, whichever is applicable. Before October 12, 1981 (the date the Economic Recovery Tax Act of 1981 codified the State employment security agency as the designated local agency for certifying targeted groups), a certificate may be received or requested in writing from either the designated local agency (as defined in paragraph (d)(10) of this section) or the office or agency that properly issued certifications under former section 50B(h)(1) (relating to the work incentive credit).

(6) *Certifications that are not timely.* Any certification that is not timely received or requested by the employer in accordance with the rules of this paragraph will be treated as invalid. Thus, the employer will not be allowed to claim a credit under section 51 with respect to any wages paid or incurred to an employee whose certification or request for certification is not timely. A timely request for certification does not eliminate the need for the employer to receive a certification before claiming the credit. In the case of a request for certification that was denied, resubmitted, and then approved, the timeliness of the request shall be determined by the timeliness of the first request.

(7) *Incorrect certification—(i) In general.* Except as otherwise provided in paragraph (d)(7)(ii) of this section, if an individual has been certified as a member of a targeted group, and such certification is based on false information provided by such individual, the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages. For purposes



of this paragraph, a certification will be revoked only if the individual would not have been certified had correct information been provided to the issuer of the certification. Thus, false information that is not material to an individual's eligibility as a member of a targeted group will not invalidate an otherwise valid certification.

(ii) *Employer's knowledge that the certification was incorrect.* In the case of an employer who knew, or had reason to know, at the time of certification that the information provided to the designated local agency was false, none of the wages paid by such employer to an individual to whom an incorrect certification has been issued will be qualified wages.

(8) *Certifications issued to certain rehires.* This paragraph (d)(8) applies in the case of an employee who first began work for the employer before August 13, 1981, and was dismissed and rehired by the employer. A certification received or requested by an employer with respect to such an employee will be considered timely only if there was a valid business reason, unrelated to the availability of the credit, for the dismissal and rehire and if the employer did not dismiss and then rehire the employee in order to meet the timing requirement with respect to certification. An individual who is dismissed and then rehired for the purpose described in the preceding sentence will be considered for purposes of section 51(d)(16) and this paragraph to have been continuously employed by the employer during the time between the dismissal and the rehire. Whether the employer was motivated by reason of the certification rules in section 51(d)(16) and this paragraph to dismiss and then rehire an employee is a question of fact to be determined from all the circumstances surrounding the dismissal and rehire. (See paragraph (e)(2) of this section for a separate rule disallowing the credit in the case of nonqualifying rehires.)

(9) *Individuals who continue to be employed by the same employer but as a member of another targeted group.* This paragraph (d)(9) applies in the case of an employee who continues to be employed by the same employer but no longer qualifies as a member of the targeted group for which such employee was first certified (e.g., the employee was originally certified as a qualified summer youth employee with respect to a ninety-day period between May 1 and September 15, but such ninety-day period has ended). In such case, the employer may request a certification that the employee is a member of another targeted group, and if any

wages paid to such individual are qualified first-year wages or qualified second-year wages, the employer may be entitled to a targeted jobs credit with respect to such wages. The second certification will not be invalid merely because it was requested or received after the individual began work for the employer; only the first certification (for example, the certification with respect to an individual hired first as a qualified summer youth employee) must meet the requirement of section 51(d)(16) that a certification must be requested or received by an employer on or before the day on which the individual begins work for the employer. In the case of a former qualified summer youth employee or a youth participating in a qualified cooperative education program who is recertified as an economically disadvantaged youth, the term "hiring date" in section 51(d)(3)(B) does not mean the day the individual is hired by the employer but means the day the individual is certified as a member of the new targeted group. Accordingly, the age requirement of section 51(d)(3)(B) shall be applied as of the day the individual is certified as a member of the second targeted group. In addition, see section 51(d)(11) for rules concerning the viability of the original economic eligibility determination.

(10) *Certification where a trade or business has been transferred to a new employer.* In the case of a transfer of a trade or business in which an individual who is a member of a targeted group is retained as an employee in the trade or business, the certification obtained for such employee by the transferor-employer will apply with respect to the transferee-employer.

(11) *Designated local agency—(i) In general.* For the period before October 12, 1981, the term "designated local agency" means the agency for any locality designated jointly by the Secretary and the Secretary of Labor to perform certifications of employees for employers in that locality. On or after October 12, 1981, the term "designated local agency" means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49-49n).

(ii) *Jurisdiction.* The designated local agency is the agency that has, pursuant to its charter, jurisdiction over the individual that is sought to be certified. Thus, any certification that is issued with respect to an individual who is not within the jurisdiction of the designated local agency that issued the certification will be invalid. Notwithstanding any other provision of this section, a request in writing for certification to the

appropriate designated local agency that is made before January 23, 1984, will be considered to be timely if it is made after an otherwise timely request in writing for certification was made to a designated local agency that does not have jurisdiction over the individual sought to be certified.

(e) *Certain ineligible individuals—(1) Related individuals.* For purposes of section 51(a), "qualified wages" does not include any amounts paid or incurred by a taxpayer to any of the following individuals:

(i) An individual who is related (within the meaning of any of paragraphs (1) through (8) of section 152(a)) to the taxpayer;

(ii) An individual who is a dependent (within the meaning of section 152(a)(9)) of the taxpayer;

(iii) An individual who is related (within the meaning of any of paragraphs (1) through (8) of section 152(a)) to a shareholder who owns (within the meaning of section 267(c)) more than 50 percent in value of the outstanding stock of the taxpayer, if the taxpayer is a corporation;

(iv) An individual who is a dependent (within the meaning of section 152(a)(9)) of a shareholder described in paragraph (e)(1)(iii) of this section;

(v) An individual who is a grantor, beneficiary or fiduciary of the taxpayer, if the taxpayer is an estate or trust;

(vi) An individual who is a dependent (within the meaning of section 152(a)(9)) of an individual described in paragraph (e)(1)(v) of this section; or

(vii) An individual who is related (within the meaning of any of paragraphs (1) through (8) of section 152(a)) to an individual described in paragraph (e)(1)(v) of this section.

(2) *Nonqualifying rehires.* For purposes of section 51(a), "qualified wages" does not include wages paid to an employee who had been employed by the employer prior to the current hiring date of the employee if at any time during such prior employment the employee was not a member of a targeted group. The preceding sentence shall not apply to an employee who was previously timely certified as a member of a targeted group with respect to the same employer. An employee shall be treated as not having been a member of a targeted group if the certification requirements of section 51(d)(16) were not met. (See example (8) in paragraph (j) of this section.)

(3) *Effective date.* The provisions of this paragraph (e) are effective with respect to employees first beginning work for an employer after August 13, 1981.



(f) *Limitations.*—(1) *Limitation on qualified first-year wages.* With respect to taxable years beginning before January 1, 1982, the amount of the qualified first-year wages which may be taken into account for purposes of the targeted jobs credit for any taxable year shall not exceed 30 percent of the aggregate unemployment insurance wages paid by the employer during the calendar year ending in such taxable year. In the case of a group of trades or businesses under common control (as defined in § 1.52-1(b)), the qualified first-year wages cannot exceed 30 percent of the aggregate unemployment insurance wages paid to all employees of that group of trades or businesses under common control during the calendar year ending in such taxable year. For this purpose, the term "unemployment insurance wages" has the same meaning given to the term "wages" as defined in § 1.51-1(b)(4). In this case of agricultural or railway labor, see section 51(h)(1) for the applicable definition of unemployment insurance wages. (See examples (13) and (14) in paragraph (j) of this section.)

(2) *Remuneration must be for trade or business employment.* Remuneration paid by an employer to an employee during any taxable year shall be taken into account only if more than one-half of the remuneration paid by the employer to an employee is for services in a trade or business of the employer. This determination shall be made by each employer without regard to section 52 (a) or (b). Accordingly, employees of corporations that are members of a controlled group or employees of partnerships, proprietorships, and other trades or businesses (whether or not incorporated) which are under common control will be treated as being employed by each separate employer for this purpose. For this purpose, the term "year" means the taxable year of the employer. (See example (15) in paragraph (j) of this section.)

(g) *Election not to claim the targeted jobs credit.* The election under section 51(j) (as amended by section 474(p) of the Tax Reform Act of 1984) not to claim the targeted jobs credit is available for taxable years beginning after December 31, 1983, and shall be made for the taxable year in which such credit is available by not claiming such credit on an original return or amended return at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for the taxable year (determined without regard to extensions). The election may be revoked within the 3-year period by

filing an amended return on which the credit is claimed.

(h) *Treatment of successor-employers.* In the case of a successor-employer referred to in section 3306(b)(1), the determination of the amount of credit under this section with respect to wages paid by such successor-employer shall be made in the same manner as if such wages were paid by the predecessor-employer referred to in such section. Thus, the 1-year period referred to in § 1.51-1(b)(2)(i) will be considered to begin with the day the employee first began work for the transferor-employer, and the amount of qualified first-year wages and qualified second-year wages paid or incurred with respect to the employee must be reduced by the amount of any such wages paid or incurred by the transferor-employer. (See examples (10) and (11) in paragraph (j) of this section.) Also, see paragraph (d) (10) of this section for rules concerning the viability of the employee's certification.

(i) *Treatment of employees performing services for other persons.* No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by such employee for another person unless the amount reasonably expected to be received by the employer for such services from such other person exceeds the remuneration paid by the employer to such employee for such services.

(j) *Examples.* The application of this section may be illustrated by the following examples which, except as otherwise stated, assume that the limitations imposed by §§ 1.51-1(f)(2) and 1.53-3 are inapplicable:

*Example (1).* Corporation M is a calendar year, cash receipts and disbursements method taxpayer. A, an economically disadvantaged youth, first began work for Corporation M on October 1, 1978. Qualified first-year wages with respect to A are wages attributable to the period beginning on January 1, 1979 (since A was first hired after September 28, 1978, he is treated as having begun work on January 1, 1979) and ending on December 31, 1979. In the 1979 taxable year, Corporation M pays A \$5,000 of qualified first-year wages attributable to services performed in 1979. Corporation M's allowable credit is equal to \$2,500 (50 percent of \$5,000).

*Example (2).* Assume the same facts as in example (1), except that in 1980 Corporation M pays to A \$100 of wages attributable to services rendered in 1979. These wages will still be considered as qualified first-year wages, but the credit may not be claimed until the 1980 taxable year.

*Example (3).* Corporation O is a calendar year, cash receipts and disbursements method taxpayer. C, a vocational rehabilitation referral, first began work for

Corporation O on July 1, 1978. Corporation O claimed a credit under section 44B (as in effect prior to enactment of the Revenue Act of 1978) for \$3,000 of wages paid to C in the 1978 taxable year. Corporation O paid C \$6,000 for services performed from January 1, 1979 to June 30, 1979. The period during which qualified first-year wages are determined begins on July 1, 1978, and ends on June 30, 1979. Amounts paid before January 1, 1979, however, are not taken into consideration in determining the amount of qualified first-year wages. Accordingly, only the wages attributable to services performed from January 1, 1979, through June 30, 1979, are considered as qualified first-year wages. Corporation O's allowable credit is equal to \$3,000 (50 percent of \$6,000).

*Example (4).* I first began work for Corporation Q, a cash receipts and disbursements method taxpayer, on January 1, 1981, and was not a member of a targeted group. On March 1, 1981, I was convicted of a felony and sentenced to prison. I quit working for Corporation Q, and served the prison sentence. On November 1, 1981, I again was hired by Corporation Q and began work on that date. On the November 1, 1981 hiring date, I was an economically disadvantaged ex-convict for whom Corporation Q received a certificate. Corporation Q paid I \$500 of wages for services performed from November 1, 1981, to December 31, 1981, and \$6,000 of wages for services performed during 1982. The \$500 of wages paid for services performed from November 1, 1981, to December 31, 1981, would be qualified first-year wages because these qualified wages were paid for services performed during the 1-year period beginning on the date I first began work for Corporation Q (January 1, 1981). The \$6,000 of wages paid for services performed during 1982 would be qualified second-year wages because these qualified wages were paid for services performed during the 1-year period beginning on the day after the first 1-year period. Accordingly, Corporation Q has an allowable credit of \$250 attributable to qualified first-year wages and \$1,500 attributable to qualified second-year wages.

*Example (5).* Assume the same facts as in example (4), except that all dates are 1 year later. Thus, I first began work for Corporation Q on January 1, 1982, was convicted on March 1, 1982, and was rehired on November 1, 1982. Under these facts, Q is not entitled to take a targeted jobs credit with respect to I's wages because I is a nonqualifying rehired.

*Example (6).* J, an economically disadvantaged youth, first began work for Corporation R, a calendar year cash receipts and disbursements method taxpayer, on December 1, 1979. On July 1, 1980, J was laid off by Corporation R and began work for Corporation S, which is unrelated to Corporation R, on July 2, 1980. On November 1, 1980, J again began work for Corporation R and continued working for Corporation R until January 1, 1982. At the time J first began work for Corporation S, J no longer met the qualifications of an economically disadvantaged youth. Corporation S may not claim a credit for wages paid to J because J was not a member of a targeted group at the



time he began work for Corporation S. Corporation R, however, may claim a credit for wages paid to J, because J was a member of a targeted group when he was hired by Corporation R. Corporation R's qualified first-year wages paid to J are the wages paid for services performed by J from December 1, 1979, to July 1, 1980; and from November 1, 1980, to November 30, 1980. Corporation R's qualified second-year wages paid to J are wages paid for services performed by J from December 1, 1980, to November 30, 1981. Corporation R may not claim a credit for wages paid for services performed by J after November 30, 1981.

**Example (7).** K, a member of a targeted group, first began work for Corporation T on January 1, 1979. For the pay periods from January 1, 1979, to March 31, 1979, Corporation T received federally funded payments for on-the-job training for K and paid wages of \$2,000 to K. During the remainder of 1979 Corporation T paid wages of \$7,000 to K. Corporation T may claim a credit on \$6,000 of qualified first-year wages. Amounts paid to K by Corporation T during the pay periods for which Corporation T received federally funded payments for on-the-job training for K are not considered wages for purposes of the credit. However, Corporation T may consider \$6,000 of the total \$7,000 of wages paid after March 31, 1979, as qualified first-year wages.

**Example (8).** P first began work for Corporation X on January 1, 1981, as an individual who was certified to be an eligible employee for purposes of the WIN credit provided in section 40. Corporation X paid P \$6,000 of wages during its taxable year beginning on January 1, 1981, and \$6,000 of wages during its taxable year beginning on January 1, 1982. X can claim a targeted jobs credit for the wages paid in 1982 if the requirements of section 51 are met. For purposes of section 51 (a), P's qualified first-year wages are the wages paid from January 1, 1981, to December 31, 1981, and P's qualified second-year wages are the wages paid from January 1, 1982, to December 31, 1982. Thus, Corporation X is only entitled to claim a targeted job credit based on P's qualified second-year wages.

**Example (9).** (i) L, 15 years of age, first began work for Corporation U on August 1, 1979. On September 3, 1979, L began her junior year in high school and enrolled in a qualified cooperative education program that was to run for her junior and senior years. On October 1, 1979, when L turned 16, she met all the requirements of § 1.51-1(c)(2)(i) and qualified as a youth participating in a qualified cooperative education program. Corporation U is entitled to claim a credit on wages paid or incurred for services performed by L after September 30, 1979, so long as L meets the requisite requirements. L's summer vacation began on June 1, 1980. Assume that the cooperative education program L was enrolled in did not continue during the summer vacation (i.e., the written agreement between the employer and the school did not cover the summer vacation). Thus, during her summer vacation, L did not meet the requirement of actively pursuing a qualified cooperative education program. Accordingly, Corporation U may not claim a

credit on wages paid for services performed by L during L's summer vacation. On September 2, 1980, L began her senior year, and again met all the requirements of § 1.51-1(c)(2)(i). She continued to meet these requirements until June 5, 1981, when she graduated from high school. Accordingly, Corporation U may claim a credit on wages paid for services performed after September 1, 1980, and before June 5, 1981.

(ii) Assume the same facts as in (i), above, except that all dates are 3 years later. Under these facts, U is not entitled to claim a targeted jobs credit with respect to any of L's wages because L has not been timely certified under section 51(d)(10) and § 1.51-1(d)(3).

**Example (10).** D began work for a drugstore owned by E as a sole proprietor on January 1, 1979, and was certified as a member of a targeted group with respect to E. On June 1, 1979, E sold the drugstore where D worked to F, who continued to operate the drugstore with D as an employee. D's qualification as a member of a targeted group is not required to be redetermined in order for F to qualify for the targeted jobs credit. F will take into account the certification of D's eligibility that was provided to E. F will have qualified first-year wages consisting of the first \$6,000 of wages paid or incurred to D by E and F from January 1, 1979 to December 31, 1979 (reduced by any qualified wages paid or incurred by E to D from January 1, 1979, to May 31, 1979). F's qualified second-year wages will consist of the first \$6,000 of wages paid or incurred to D by F from January 1, 1980, to December 31, 1980.

**Example (11).** G began work in a machine shop owned by H as a sole proprietor on January 1, 1979, and was certified as a member of a targeted group with respect to H. On June 1, 1980, H transferred all the assets of the machine shop to newly formed Corporation P. Corporation P retained G as an employee in the machine shop. G's qualification as a member of a targeted group is not required to be redetermined in order for P to qualify for the targeted jobs credit. H has qualified first-year wages in the amount of the first \$6,000 of wages paid or incurred to G by H from January 1, 1979, to December 31, 1979. Corporation P has qualified second-year wages in the amount of the first \$6,000 of wages paid or incurred to G by H and Corporation P from January 1, 1980, to December 31, 1980 (reduced by any qualified second-year wages paid by H to G).

**Example (12).** W operates a retail store as a sole proprietor. On June 1, 1982, W hires S after receiving a written determination from a local community organization that S meets the requirements of an economically disadvantaged youth. W does not request a certification from the State employment security agency as to S's eligibility. W is not entitled to claim a credit with respect to wages paid to S because W did not receive, or request in writing, a certification from the State employment security agency as to S's eligibility on or before the day on which S began work for W.

**Example (13).** Corporation V is a cash receipts and disbursements method taxpayer with a July 1 through June 30 taxable year. In the taxable year ending June 30, 1980, the

aggregate unemployment insurance wages paid by V were \$150,000. In calendar year 1979 the aggregate unemployment insurance wages paid by Corporation V were \$110,000. Corporation V's qualified first-year wages are limited to 30 percent of the aggregate unemployment insurance wages paid by it in calendar year 1979 or \$33,000 (30 percent of \$110,000), even though the aggregate unemployment insurance wages paid by it in the taxable year ending June 30, 1980, were \$150,000.

**Example (14).** Assume the same facts as in example (13), except that all dates are 3 years later. Since the limitation on qualified first-year wages does not apply to taxable years beginning after December 31, 1981, Corporation V's qualified first-year wages are \$150,000.

**Example (15).** M operates a retail store as a sole proprietor. N and O, both members of a targeted group, first began work for M on January 1, 1979. M paid N total qualified first-year wages of \$6,000 in 1979. Three thousand one hundred dollars of those wages were for services in M's retail store, and \$2,900 of those wages were for services as M's maid. M paid O total qualified first-year wages of \$6,000 in 1979. Three thousand dollars of those wages were for services in M's store and \$3,000 of those wages were for services as M's chauffeur. M has an allowable credit of \$3,000 in 1979 on all \$6,000 of qualified first-year wages paid to N because more than one-half of the remuneration paid by M to N was for services in M's trade or business. M may not take into account the wages paid to O because not more than one-half of the remuneration paid by M to O was for services in M's trade or business. Accordingly, M may not claim a credit on wages paid to O.

Par. 3. Section 1.381(c)(26)-1 is revised to read as set forth below:

**§ 1.381(c)(26)-1 Credit for employment of certain new employees.**

(a) *Carryovers and carrybacks.* For taxable years beginning before January 1, 1984, the computation of carryovers and carrybacks of unused targeted jobs credit (new jobs credit in the case of wages paid before 1979) under section 44B (as in effect prior to enactment of the Tax Reform Act of 1984) in a transaction to which section 381(a) applies shall be made under the principles of § 1.381(c)(23)-1 (relating to the computation of carryovers and carrybacks of unused investment credit), except that the provisions of paragraph (c)(4) and paragraph (e) (6), (7) and (8) of such section shall not apply.

(b) *Other items.* See § 1.51-1(h) for a rule that applies to certain transfers of a trade or business in which a member of a targeted group is employed.



# Temporary Regulations Under the Revenue Act of 1978

## PART 5—[AMENDED]

Par. 4. The authority for Part 5 continues to read as follows:

Authority: 26 U.S.C. 7805.

### § 5.51-1 [Removed]

Par. 5. Section 5.51-1 is removed.

# Temporary Regulations—Elections Under Various Public Laws

## PART 5h—[AMENDED]

Par. 6. The authority for Part 5h continues to read as follows:

Authority: 26 U.S.C. 7805.

### § 5h.4 [Amended]

Par. 7. Section 5h.4(e) is removed.

# Internal Revenue Practice Regulations

## PART 602—[AMENDED]

Par. 8. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

### § 602.101 [Amended]

Par. 9. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 1.51-1(d) . . . 1545-0219."

This Treasury decision includes amendments that conform the regulations to the amendments made to section 51 of the Internal Revenue Code of 1954 by the Tax Reform Act of 1984. Because these are interpretative regulations and because there is need for immediate guidance, the requirement for notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code and the effective date limitation of subsection (d) of that section are found to be inapplicable with respect to such amendments.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: October 16, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-26491 Filed 11-5-85; 8:45 am]

BILLING CODE 4030-01-M

## 26 CFR Parts 1 and 602

[T.D. 8060]

# Income Tax; Removal of Certain Temporary Regulations on Substantiation and the Taxation of Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

**ACTION:** Withdrawal of temporary regulations.

**SUMMARY:** This document provides a Treasury decision that removes certain temporary regulations relating to the requirement of section 274(d) (as amended by the 1984 Act) that any deduction or credit with respect to listed property be substantiated with adequate contemporaneous records (T.D. 7986 and T.D. 8009), and removes a portion of other temporary regulations contained in T.D. 8009 relating to the taxation of fringe benefits. A change to the applicable tax law was made by Pub. L. 99-44, Repeal of Contemporaneous Recordkeeping Requirements. This Treasury decision is necessary to respond to the recent Congressional amendments made by Pub. L. 99-44.

**DATE:** The removal of temporary regulations by this Treasury decision is effective for taxable years beginning after December 31, 1984.

**FOR FURTHER INFORMATION CONTACT:** Michel A. Dazé (202-566-3829) or Annette J. Guarisco (202-566-3918) of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, (Attention: CC:LR:T).

## SUPPLEMENTARY INFORMATION:

### Background

#### Substantiation

Prior to the Tax Reform Act of 1984 (the 1984 Act), taxpayers were required under section 274(d) of the Internal Revenue Code of 1954 (the Code) to substantiate by adequate records or sufficient evidence corroborating the taxpayers' own statements any deduction for expenses incurred for (1) travel away from home (including meals and lodging), (2) entertainment, amusement, or recreation activities or the use of a facility in connection with those activities, or (3) business gifts. Before amendment by the 1984 Act, section 274(d) did not apply to vehicles when used in local travel. Instead, the more general substantiation standards under section 162 of the Code were applicable.

Section 179(b) of the 1984 Act amended section 274(d) to require that any deduction or credit claimed for expenses incurred while traveling away from home, for entertainment, for business gifts, and for "listed property" be substantiated by adequate contemporaneous records. Listed property, as defined in section 280(d)(4) of the Code, generally includes any passenger automobile, any other property used as a means of

transportation, any property used for entertainment, recreation, or amusement, and any computer and peripheral equipment.

Temporary and proposed income tax regulations relating to the requirement of section 274(d) (as amended by the 1984 Act) that any deduction or credit with respect to "listed property" be substantiated with "adequate contemporaneous records" were published in the *Federal Register* for October 24, 1984 (49 FR 42701). These temporary regulations were amended in part and supplemented by additional temporary and proposed regulations that were published in the *Federal Register* for February 20, 1985 (50 FR 7038) (the February regulations). The February regulations provided certain safe harbors for satisfying the adequate contemporaneous record requirement with respect to the use of vehicles. Adequate contemporaneous records were generally not required if: (1) A vehicle was regularly used directly in connection with a taxpayer's farming business and the taxpayer's income from farming exceeded 70 percent of gross income from all sources ("farming" safe harbor); (2) a vehicle was not used for personal purposes and the vehicle was kept on the employer's premises ("no personal use" safe harbor); (3) the only personal use of an employer-provided vehicle by employees was commuting, the requirements of § 1.61-2T were met, and \$3.00 per day was included in the income of the employee using the vehicle ("commuting only" safe harbor); or (4) an owner, employer, or employee spent most of a normal business day using a vehicle to make several stops in connection with the owner's or employer's business ("multiple stop" safe harbor). Taxpayers who would have been eligible to use either the "farming" or the "multiple stop" safe harbor could have treated 80 percent of the use of a vehicle designed for commercial purposes, or 70 percent of the use of any other vehicle, as business use without maintaining adequate contemporaneous records. Alternatively, these taxpayers could have kept track of total annual mileage and personal miles driven ("personal miles" safe harbor).

Section 1(a) of Pub. L. 99-44 (Repeal of Contemporaneous Recordkeeping Requirement) amended section 274(d) and section 1(c) of the same law rescinded any regulations issued to carry out certain of the amendments made by the 1984 Act. This document, therefore, removes the regulatory provisions so issued under section 274(d) as amended by the 1984 Act.



For taxable years beginning in 1985 or before, the recordkeeping requirements of sections 162 and 274(d) apply as in effect before the 1984 Act. Under section 274(d), any deduction claimed for (1) expenses incurred while traveling away from home, (2) business-related entertainment expenses, and (3) business-related gifts is disallowed unless substantiated by adequate records or sufficient corroborating evidence. The more general substantiation requirements of section 162 apply to local travel and to listed property, such as a computer, not previously subject to the substantiation requirements of section 274(d). Section 162 requires a taxpayer to prove eligibility for, and the amount of, any deduction claimed for business expenses.

For taxable years beginning after 1985, adequate records or sufficient corroborating evidence are also required to substantiate any deduction or credit claimed for expenses with respect to local travel and listed property. New temporary regulations under section 274 applicable to taxable years beginning after 1985 are published elsewhere in this issue of the *Federal Register*. These regulations will provide taxpayers with guidance for substantiating under section 274(d) any deductions or credits claimed for business expenses.

#### *Fringe benefits*

Section 61 of the Code provides that gross income includes "all income from whatever source derived", unless specifically excluded by another provision of the Code. Section 61 also specifies that gross income includes compensation for services. Section 531 of the 1984 Act clarified that fringe benefits are included in income as compensation for services and subject to income and employment taxes. Section 531 also provided an exclusion from gross income for the value of certain fringe benefits (no-additional-cost services, qualified employee discounts, working condition fringes, and de minimis fringes).

Temporary and proposed regulations that provide guidance concerning the taxation of fringe benefits were published in the *Federal Register* for January 7, 1985 (50 FR 747) (the January regulations). These regulations provide special rules that may be used to value certain fringe benefits such as the availability of an employer-provided automobile, the use of an employer-provided vehicle for commuting, personal flights on employer-provided airplanes, and taxable flights on commercial airlines. The January regulations also provide guidance

concerning income and employment tax withholding and reporting on the value of the benefits. Under these regulations, employers were permitted to deem the value of noncash fringe benefits provided in a calendar quarter as paid no later than the last day of the calendar quarter.

The January regulations were amended in part and supplemented by additional temporary and proposed regulations published in the *Federal Register* for February 20, 1985 (50 FR 7038) (the February regulations). The February regulations clarified that the recordkeeping requirements provided in section 274(d) of the Code (and the regulations thereunder) applied to the determination of the amount of a working condition fringe exclusion. The February regulations also provided that recipients of fringe benefits may use the special recordkeeping safe harbors to substantiate the business use of an employer-provided vehicle.

The repeal of the contemporaneous recordkeeping requirement had the effect of also repealing the "farming" and "multiple stop" safe harbors promulgated in the February regulations. Thus, these safe harbor rules are not presently in effect and may not be used to exclude from gross income 70 or 80 percent (whichever would be applicable) of the value of the use of a vehicle without maintaining records. Public Law 99-44 also had the effect of repealing the "personal miles" safe harbor. The commuting-only safe harbor and the no-personal use safe harbor, as modified by the Conference Report, are still in effect and may be used to determine the value of the fringe benefit includible in income.

In a letter to Senator Robert Dole, Assistant Secretary of the Treasury Ronald A. Pearlman indicated that the Service will revise the January regulations relating to the valuation of personal flights on employer-provided aircraft (131 Cong. Rec. S6369 (daily ed. May 16, 1985)). The letter set forth safe harbor values that may be used to value personal flights on employer-provided aircraft. The letter also set forth a special rule under which the value of a personal flight taken on an employer-provided aircraft may be deemed to have no value. When 50 percent or more of the regular passenger seating capacity on the aircraft as used by the employer is occupied by individuals whose flight are primarily for the employer's business and whose flights are thus excludable from income, a personal flight by an employee, the employee's spouse, or the employee's dependent children in any of the remaining seats is

deemed to have no value. The Treasury Department intends to issue regulations during 1985 that implement the rules outlined in the letter.

Public Law 99-44 did not affect general valuation rules or any special valuation rule, such as the Annual Lease Value safe harbor, provided in the January regulations. Many comments were received on these rules, including suggestions that a cents-per-mile formula be used to value the personal use of employer-provided vehicles. Where appropriate, the Service will revise the temporary and proposed regulations when the final regulations are published to take into account comments received.

The January regulations also provide a special valuation rule that, under certain circumstances, may be used to value taxable flights on commercial airlines. The regulations provide that these flights may be valued at 50 percent of the highest unrestricted coach fare available on the flight. Although Pub. L. 99-44 did not affect this valuation rule, the 50 percent value may be reduced in the revised regulations.

#### *Fringe benefits withholding*

Public Law 99-44 and the Conference Report that accompanied the law provide new rules for withholding and reporting on taxable noncash fringe benefits. On July 19, 1985, the Service issued a news release and an announcement that provide guidelines on the new rules (see Announcement 85-113, 1985-31 I.R.B. 31, August 5, 1985). The Service announced that the guidelines may be relied upon until the issuance of new regulations.

The announcement provides that employers may treat the value of fringe benefits provided in a calendar year as paid on a pay period, quarterly, semi-annual, annual, or other basis provided that the benefits are treated as paid no less frequently than annually. The employer may make a reasonable estimate of the fringe benefits on the date or dates it elects to treat the benefits as paid for purpose of meeting the timely tax deposit requirements. The estimated deposit amount is determined by calculating the amount the employer would be required to deposit had the employer paid cash wages equal to the estimated value of the fringe benefits provided on the date or dates selected and withheld taxes from those cash wages. If the employer underestimates the value of the fringe benefits and thereby makes an underdeposit of the amount required to be deposited (that is, the amount the employer would be required to deposit if the employer had



withheld the applicable taxes), the employer may be subject to the failure to deposit penalty. If the employer overestimates the value and deposits more than the amount required, the employer may claim a refund or elect to have the overpayment applied to the employer's next employment tax return.

Under the general income tax and reporting rule, the employer must determine the actual value of the fringe benefits provided in a calendar year by January 31 of the following calendar year. If the benefit is the personal use of a highway motor vehicle, the employer may either determine the actual value for the calendar year or determine the actual value as if the entire usage of the vehicle for the year by the employee is personal (100 percent income inclusion). If the employer includes 100 percent of the value of the vehicle in the employee's income, the employee may calculate the value of his or her business use of the vehicle on Form 2106, Employee Business Expenses, and deduct this amount on Form 1040, Individual Income Tax Return.

For the administrative convenience of employers, a special accounting rule is available as an alternative to the general rule. Under the special accounting rule, the employer may treat the value of the benefits provided during the last two months of the calendar year or any shorter period as paid during the subsequent calendar year. Thus, the employer may treat the value of the benefits provided in the period beginning January 1, 1985, and ending October 31, 1985, as the value of the benefits provided in 1985. For years subsequent to 1985, the value of the benefits actually provided in the last two months of the previous calendar year is treated as provided in the current calendar year together with the value of the benefits provided in the first 10 months of the current calendar year.

Use of the special accounting rule is optional. An employer may use the rule for determining the value of some fringe benefits but not others and the period for which it is used need not be the same for each fringe benefit. However, an employer that uses the rule for a particular benefit must use the rule with respect to all employees who receive that fringe benefit. If the employer uses the special accounting rule, the employee must use the special accounting rule and must use it for the same period as the employer. In addition, since the employee must use the special accounting rule for all purposes, deductions (other than actual out-of-

pocket expenses) with respect to a fringe benefit provided in a calendar year are allowable in that calendar year only to the extent that the employer included the value of the fringe benefit in the employee's income for that calendar year.

Section (3) of Pub. L. 99-44 provides that an employer may elect not to withhold income taxes on the value of the use of an employer-provided highway motor vehicle provided the employer notifies the affected employee and included the value of the use of the vehicle on the employee's Form W-2. If the election is to apply to 1985, the employer must have notified the affected employee of its decision by September 1, 1985.

#### Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, a regulatory flexibility analysis is not required.

#### Drafting Information

The principal authors of this Treasury decision are Michel A. Dazé and Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this Treasury decision, on matters of both substance and style.

#### List of Subjects

26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

#### 26 CFR Part 602

Reporting and recordkeeping requirements.

#### Adoption of amendments to the regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

#### PART 1—[AMENDED]

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7804, \* \* \* Section 1.132-1T also issued under 26 U.S.C. 132.

**Par. 2.** The following paragraphs and sections are removed:

1. Section 1.132-1T Q-4a and A-4a;
2. Section 1.274-5T;
3. Section 1.274-6T.

#### PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 3.** The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**Par. 4.** Section 602.101 (c) is amended by removing from the table "§ 1.274-5T . . . 1545-0074" and "§ 1.274-6T . . . 1545-0074".

This Treasury decision removes the regulations issued to conform to statutory provisions that have been repealed. For this reason, it is found impracticable and unnecessary to issue this Treasury decision with notice and public procedure under subsection 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: August 30, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 26211 Filed 11-1-85; 8:46 am]

BILLING CODE 4830-01-M

#### 26 CFR Parts 1 and 602

[T.D. 8061]

#### Income Tax; Temporary Regulations Relating to the Revised Recordkeeping Requirements with Respect to Listed Property; Taxation of Fringe Benefits

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary income tax regulations relating to the requirement that any deduction or credit with respect to certain business-related expenses be substantiated with adequate records or sufficient evidence corroborating a taxpayer's own statement. This document also amends other temporary income tax regulations relating to the limitations on cost recovery deductions and the investment tax credit for "listed property" and temporary income tax regulations relating to the taxation of fringe benefits. In addition, the text of the temporary regulations set forth in this document serves as the text of



proposed regulations for two notices of proposed rulemaking published in the Proposed Rules section of this issue of the *Federal Register*. This action is necessary to conform the income tax regulations to recent legislation and to provide the public with guidance necessary to comply with the law.

**EFFECTIVE DATES:** The amendments to § 1.61-2T are effective with respect to the commuting use of employer-provided vehicles that occurs after December 31, 1984. The amendments to § 1.132-1T are effective with respect to noncash fringe benefits received after December 31, 1984. The amendments to § 1.162-25T, relating to certain deductions with respect to noncash fringe benefits, are effective as of January 1, 1985. The temporary regulations relating to the substantiation requirements of section 274 (d) (§§ 1.274-5T and 1.274-6T) are effective for taxable years beginning after December 31, 1985. Section 1.274-5T(d) (2) and (3) applies to taxable years beginning after December 31, 1984. The amendments to the temporary regulations relating to the limitations on the investment tax credit and cost recovery deductions have the following effective dates: § 1.280F-3T(d)(3), as amended, applies to listed property placed in service after June 18, 1984, beginning with the first taxable year in which section 274(d) applies to that property; the amendments to §§ 1.280F-1T and 1.280F-5T are effective for passenger automobiles leased after April 2, 1985; the amendment to § 1.280F-6T(b)(2)(ii) is effective January 1, 1986 for vehicles placed in service after December 31, 1985; and the amendment to § 1.280F-6T(b)(3) is effective for property placed in service after June 18, 1984.

**FOR FURTHER INFORMATION CONTACT:** Michel A. Dazé, with respect to the provisions under sections 162, 274, and 280F (202-566-6456), or Annette J. Guarisco, with respect to the taxation of fringe benefits (202-566-3918), of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This document adds new temporary regulations to the Income Tax Regulations (26 CFR Part 1) under section 274 of the Internal Revenue Code of 1954 (Code), relating to the substantiation requirements with respect to certain "listed property." Section 179 of the Tax Reform Act of 1984 (the 1984 Act) amended Code

section 274 to provide that no deduction or credit shall be allowed with respect to "listed property" (as defined in section 280F(d)(4)), unless the taxpayer substantiated any deduction or credit with "adequate contemporaneous records." Temporary regulations were published in the *Federal Register* on October 24, 1984, and February 20, 1985 (49 FR 42701 and 50 FR 7038), providing guidance for taxpayers affected by the requirement to maintain adequate contemporaneous records for taxable years beginning after December 31, 1984. Section 1 of the Repeal of Contemporaneous Recordkeeping Requirements (the 1985 Act) amended section 274 to provide that any deduction or credit with respect to listed property must be substantiated by adequate record or sufficient corroborative evidence and repealed any regulations issued to carry out the amendments made to section 274 by the 1984 Act. This document provides temporary regulations under section 274 to clarify the types of records that are generally necessary to substantiate any deduction or credit with respect to listed property.

Section 531 of the 1984 Act (98 Stat. 877) made various amendments to Code sections 61, 3121, 3231, 3306, 3401, and 3501 and added new Code sections 132 and 4977, relating to the taxation of fringe benefits. Temporary regulations were published in the *Federal Register* on January 7, 1985 (50 FR 747) to provide guidance on the treatment of taxable and nontaxable fringe benefits, including the valuation of taxable fringe benefits for purposes of income and employment tax withholding. Where necessary, to clarify the interaction between the section 274 substantiation requirements and the section 132 regulations, these regulations were amended in the *Federal Register* on February 20, 1985 (50 FR 7038). To reflect the changes made by the 1985 Act to section 274 and the effect on the section 132 regulations, this document amends those temporary regulations.

Section 179 of the 1984 Act also added a new Code section 280F to provide limitations on the investment tax credit and depreciation with respect to "listed property" when such property is used for both business and personal purposes. "Listed property" includes a passenger automobile or any other property used as a means of transportation. The 1985 Act amended section 280F to lower the limitations on the amount of the investment tax credit and annual cost recovery deductions allowable for passenger automobiles placed in service after April 2, 1985. This

document amends the temporary regulations under section 280F, which were also published in the *Federal Register* on October 24, 1984 (49 FR 42701).

The temporary regulations contained in this document relating to both substantiation and the taxation of fringe benefits serve as the text of proposed regulations for two notices of proposed rulemaking published in the Proposed Rules section of this issue of the *Federal Register*.

#### **Explanation of Provisions**

##### *Substantiation Requirements*

##### *Introduction*

As enacted in 1962, section 274(d) required a taxpayer to substantiate any deduction claimed for certain ordinary and necessary business expenses with adequate records or sufficient evidence corroborating the taxpayer's own statement. The three categories of expenses subject to these substantiation requirements are expenses incurred (1) while traveling away from home, including meals and lodging, (2) for entertainment, amusement, or recreation activities or the use of a facility in connection with those activities, or (3) for business-related gifts. Section 274(d) provides that a deduction for the expenses listed above is disallowed unless substantiated by adequate records or sufficient corroborative evidence.

Regulations under section 274(d) were first issued in 1962 (see § 1.274-5). Under those regulations, a taxpayer was required to prove certain elements of an expenditure, for example, the amount, time, place, and business purpose of an expenditure for travel away from home. The regulations also described the types of evidence that constitute an adequate record or that may be corroborative of each element of an expenditure. To minimize duplication of records, the regulations provided special rules for certain employees who adequately account to their employers for expenses incurred in the employer's behalf, or independent contractors who adequately account to clients for reimbursements or expense allowances.

After amendment by the 1984 Act and the 1985 Act, section 274(d) disallows any deduction or credit claimed for the expenses listed above and for expenses incurred with respect to "listed property" unless substantiated by adequate records or sufficient corroborative evidence. Listed property, as defined in Code section 280F(d)(4), generally includes any passenger automobile, any other property used as



a means of transportation, any property used for entertainment, recreation, or amusement, and any computer and peripheral equipment.

Existing § 1.274-5 of the income tax regulations serves as the basis for the temporary regulations under section 274(d) that are contained in this Treasury decision. The temporary regulations contain additional provisions to reflect the application of section 274(d) to deductions or credits claimed with respect to listed property, and the exemption from the requirements of section 274(d) for "qualified nonpersonal use vehicles" under section 274(i).

#### Application to Listed Property

As set forth in § 1.274-5T(b)(6), the elements of an expenditure with respect to listed property that a taxpayer must prove are (i) the amount, (ii) the date, and (iii) the business purpose of an expenditure or use. The amount of an expenditure may be the cost of acquisition (i.e., the basis of the property), a lease payment, the cost of maintenance and repairs, or the cost of capital improvements. The amount of use is the ratio of business use to total use of the property for a period of time, determined on the basis of mileage for automobiles and other vehicles and time for other listed property.

Section 274(d) contemplates that a taxpayer will maintain and produce records or other evidence that will constitute proof of the elements of an expenditure or use. As explained in § 1.274-5T(c)(1), written evidence has more probative value than oral evidence alone, and the value of written evidence is greater the closer in time it relates to the expenditure or use. A contemporaneous log is not required by the temporary regulations, but a record of the elements of an expenditure or of a business use made at or near the time of the expenditure or use when there is generally accurate recall would constitute the best evidence to satisfy the substantiation requirements of section 274(d).

A taxpayer may satisfy the adequate records requirement by maintaining an account book, diary, log, statement of expense, trip sheets, or similar record prepared at or near the time of an expenditure or use, and documentary evidence which, in combination, are sufficient to establish each element of an expenditure. Information in an account book, etc. need not duplicate information contained in documentary evidence, such as a receipt, as long as the two forms of evidence complement each other in an orderly manner. The information required must be recorded

at or near the time of the expenditure or use when the taxpayer has full present knowledge of each element of the expenditure or use. For example, a taxpayer may substantiate the business use of an automobile for a period with a journal in which the taxpayer records at the end of every week each element of the business uses of the automobile during the week.

The temporary regulations provide that the level of detail required in an adequate record to establish the element of the business use of property may vary depending on the facts and circumstances. If the taxpayer's use of property follows a regular pattern, the taxpayer may not need to record as much information as would be required if business use were sporadic. See § 1.274-5T(c)(2)(ii) for an example.

If a taxpayer fails to maintain an adequate record, then the taxpayer must establish the elements of an expenditure or use by a written or oral statement and other corroborative evidence sufficient to establish the elements. For example, a taxpayer may maintain an adequate record for portions of a taxable year and use that record to substantiate the business/investment use of listed property if the taxpayer can demonstrate by other evidence that the periods for which the adequate record is maintained are representative of the taxable year. See § 1.274-5T(c)(3)(ii).

Generally, a taxpayer must substantiate the elements of each separate expenditure or use to which section 274(d) applies. However, the taxpayer may substantiate concurrent or repetitious expenditures or uses as a single item in certain cases. As provided in § 1.274-5T(c)(6)(i)(B), amounts expended in connection with the use of listed property, such as for gasoline or repairs for an automobile, may be aggregated. If these expenses are aggregated, the taxpayer need not prove the business purpose of each expense, but may prorate the expenses based on the total business use of the property. Similarly, a taxpayer may consider a round trip or an uninterrupted period of business use as a single use (see § 1.274-5T(c)(6)(i)(C)).

#### Tax Return Information

As required by the conference report to the 1985 Act (H.R. Rep. No. 67, 99th Cong., 1st Sess. 10 (1985)), § 1.274-5T(d)(2) and (3) of the temporary regulations provides that taxpayers must include certain information on their tax returns about the business use of vehicles and other listed property. On returns for taxable years beginning after December 31, 1984, taxpayers that claim a deduction or credit with respect to any

vehicle are required to provide the date that the vehicle was placed in service, information about the number of miles driven for various purposes, the percent of business use, whether evidence to support the business use is available, and whether that evidence is written. It is expected that an employer who provides the use of a vehicle to an employee will obtain information from the employee sufficient to complete the employer's tax return. As provided by § 1.274-5T(d)(2)(ii), however, certain employers need not include all the information collected from employees on their tax returns and other employers need not obtain any information from employees. With respect to other types of listed property, taxpayers are required to provide the date that the property was placed in service, the percent of business use, whether evidence is available to support the amount of business use, and whether that evidence is written.

#### Listed Property Provided to Employees

Section 1.274-5T(e) provides new rules for the substantiation of the business use of listed property made available by an employer for use by an employee. Generally, an employee may not exclude from gross income as a working condition fringe any amount of the value of the availability of listed property provided by an employer to the employee, unless the employee substantiates for the period of availability the amount of the exclusion with adequate records or sufficient corroborative evidence. If the employer provides the use of a vehicle to an employee and includes the value of the availability of the vehicle in the employee's gross income without taking into account any exclusion for a working condition fringe, the employee must substantiate any deduction claimed for the business use of the vehicle with adequate records or sufficient corroborative evidence.

An employer substantiates its business use of listed property provided to employees by showing either (1) that, based on adequate records maintained by the employees or on other evidence corroborating the employees' statements, all or a portion of the use of the listed property is by employees in the employer's trade or business, and that if any employee used the property for personal purposes, the employer included an appropriate amount in the employee's income, or (2) in the case of an employer-provided automobile, that the employer treats all use by employees as personal use and includes



an appropriate amount in the employees' incomes.

For purposes of substantiating the business use of employer-provided listed property under § 1.274-5T(e), an employer may rely on adequate records maintained by its employee or on the employee's own statement if corroborated by other sufficient evidence unless the employer knows or has reason to know that they are not accurate. Alternatively, the employer may rely on a statement submitted by the employee that provides sufficient information to allow the employer to determine the business use of the property unless the employer knows or has reason to know that the statement is not based on adequate records or sufficient corroborative evidence.

#### Employee Business Expenses

The provisions of § 1.274-5T(f) of the temporary regulations are derived from existing § 1.274-5(e) with only minor amendments. Section 1.274-5T(f) applies to employees who are reimbursed for deductible business expenses that they incur in connection with the performance of services as employees. If the employee makes an adequate accounting (i.e., provides adequate records) to the employer of the expenses incurred and receives reimbursements equal to the expenses, the employee need not report either the reimbursements or the expenses on a tax return. If the amount of the reimbursements exceeds the amount of deductible expenses incurred by the employee, the employee must include the excess in income. If the employee's deductible expenses exceed any reimbursement received from the employer, the employee must be able to substantiate any deduction with the excess in accordance with the requirements of section 274(d).

An employee who is not required to make an adequate accounting to the employer, or who is required and fails to do so, must submit, as part of his tax return, the appropriate form issued by the Internal Revenue Service for claiming deductions for employee business expenses (for 1985, Form 2106) and provide the information requested on that form. In addition, the employee must be able to substantiate any deduction for business expenses in accordance with the requirements of section 274(d).

Any employee, whether required to make an adequate accounting to the employer or not, who claims any deduction or credit with respect to listed property, must submit the appropriate form issued by the Internal Revenue Service to provide the necessary

information about the use of that property, as discussed above.

#### Reimbursement Arrangements and Mileage Allowances

Under § 1.274-5T(g) of the temporary regulations, which is similar to existing § 1.274-5(f), the Commissioner is authorized to prescribe rules under which reimbursement arrangements or per diem allowances covering ordinary and necessary expenses of traveling away from home, or mileage allowances providing for ordinary and necessary expenses of local travel or transportation while traveling away from home, will be regarded as equivalent to substantiation by adequate records or other sufficient evidence. (See, for example, Rev. Rul. 80-62, 1980-1 C.B. 63, as modified by Rev. Rul. 80-203, 1980-2 C.B. 101, Rev. Rul. 84-51, 1984-1 C.B. 90, and Rev. Rul. 85-155, 1985-40, I.R.B. 18.) A mileage allowance for use of a vehicle may be paid only to the owner of the vehicle.

For example, an employer may pay an employee a fixed mileage allowance for use of the employee's own automobile in connection with the employer's trade or business. If a fixed mileage allowance not exceeding the prescribed standard mileage rate (see Rev. Proc. 85-49, 1985-40 I.R.B. 26) is used in payment of an employee's ordinary and necessary expenses of transportation, whether for travel away from home or local travel, and the elements of time, place, and business purpose are substantiated in accordance with the requirements of section 274(d), the mileage allowance is deemed to substantiate the amount of the transportation expenses.

Rev. Rul. 84-127, 1984-2 C.B. 245, provides that an employer is not required to report as wages on Form W-2 reimbursements of amounts equal to or less than the standard mileage rate, but is required to report amounts of reimbursement to an employee exceeding that rate. In theory, the reimbursement equal to or less than the standard mileage rate would be for otherwise deductible expenses incurred by the employee and need not be reported as income. Because the standard mileage rate includes a component for depreciation, the limitations on the investment tax credit and cost recovery deductions imposed by section 280F(d)(3) and § 1.280F-6T(a) affect the holding of Rev. Rul. 84-127.

Under § 1.280F-6T(a)(1), employee use of the employee's own automobile (or other listed property) in connection with the employer's trade or business is not treated as business use for purposes of determining the amount of any investment credit or cost recovery

deduction unless the use is for the convenience of the employer and required as a condition of employment. Whether use of an employee's own automobile is for the convenience of the employer and required as a condition of employment is determined by applying the same principles for determining whether the value of any meals or lodging furnished by an employer to an employee are excluded under section 119 from the employee's gross income. If either requirement is not met and the employee has no other business use of the automobile, the employee is not entitled to any investment credit or cost recovery deduction with respect to that automobile. Under those circumstances, a reimbursement for transportation expenses at the standard mileage rate would exceed the employee's deductible expenses by the amount of the depreciation component. The reimbursement, therefore, must be reported by the employer as income on Form W-2.

#### Business Expenses of Independent Contractors

Similar to existing § 1.274-5(g), § 1.274-5T(h) provides rules for the reporting and substantiation of certain expenses for travel, entertainment, gifts, or with respect to listed property paid or incurred by an independent contractor in connection with services performed for a client or customer under a reimbursement or other expense allowance arrangement. Unless an independent contractor substantiates each element of an expenditure in accordance with the requirements of section 274(d) or makes an adequate accounting of that expenditure to a client or customer, the independent contractor must include any reimbursement for that expenditure in income. If the independent contractor accounts to the client or customer for any expenses with adequate records or other sufficient evidence, the client or customer must be prepared to substantiate each element of the expenditure as required by section 274(d).

#### Qualified Nonpersonal Use Vehicles

Section 2 of the 1985 Act also amended section 274(d) to provide that the substantiation requirements of that section do not apply to any qualified nonpersonal use vehicle. As defined in section 274(i), a qualified nonpersonal use vehicle is any vehicle which, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes. Section 1.274-5T(k) of the temporary regulations contains a



list of these vehicles to which section 274(d) does not apply. Under § 1.274-5T(k)(2)(ii)(S), the Commissioner may rule that other vehicles are qualified nonpersonal use vehicles. Comments are, therefore, invited concerning other vehicles that may be designated as qualified nonpersonal use vehicles.

#### Business Use of Automobiles and Certain Other Vehicles

A taxpayer whose use of an automobile or certain other vehicles meets certain requirements during a taxable year or shorter period may use, for the relevant period, one of the methods prescribed in § 1.274-6T to satisfy the substantiation requirements of section 274(d). Two types of written policy statements, in conjunction with other evidence, if initiated and kept by an employer to implement a policy of no personal use, or no personal use except for commuting, of a vehicle provided by the employer to an employee, may qualify as sufficient evidence corroborating the employer's or employee's own statement regarding the amount of business use of that vehicle. Methods of satisfying the substantiation requirements are also provided for vehicles used in connection with the business of farming and for automobiles provided to employees by employers who treat all use by the employees as personal use. For taxable years beginning in 1985, the methods prescribed in § 1.274-6T will also satisfy the requirements of section 162.

As provided in § 1.274-6T(b), for a vehicle used in connection with the business of farming, an employer may determine any deduction or credit with respect to the vehicle as if the amount of business use were 75 percent plus that percentage attributable to an amount included in an employee's income to reflect any personal use of the vehicle by the employee. Unlike the special rule for farm vehicles contained in the repealed temporary regulations that were published in the *Federal Register* for February 20, 1985, § 1.274-6T(b) does not provide separate percentages of business use for vehicles designed for commercial use and for other vehicles. Only one percentage is considered appropriate because section 274(i) exempts most vehicles designed for commercial use from the section 274(d) substantiation requirements.

#### Temporary Regulations Under Section 280F

As added to the Code by the 1984 Act and amended by the 1985 Act, section 280F generally imposes limitations on the amount of investment tax credit and annual depreciation deductions allowed

for an automobile placed in service or leased after June 18, 1984. Section 280F also requires the Internal Revenue Service to issue regulations that impose on lessees of passenger automobiles limitations "substantially equivalent" to the limitations imposed on similarly situated owners of passenger automobiles. On October 19, 1984, pursuant to this requirement, the Service issued § 1.280F-5T of the temporary regulations. The 1985 Act further limits the amount of investment tax credit and annual depreciation deductions allowable for passenger automobiles placed in service after April 2, 1985.

Limitations applicable to automobiles leased after April 2, 1985, were issued on August 20, 1985, in Announcement 85-127 (also published in 1985-35 I.R.B. 40, September 3, 1985). Section 1.280F-5T of the temporary regulations is amended to incorporate the provisions of that announcement. An error in paragraph (d)(2) of the announcement is also corrected: § 1.280F-5T(e)(5)(ii) clarifies that, for any passenger automobile that has a fair market value greater than \$32,400, the limitation in the form of an income inclusion in the seventh and subsequent taxable year during which the automobile is leased is only six percent of the amount prescribed by the announcement.

One comment on the temporary regulations issued in October, 1984, was that the limitations applicable to leased automobiles did not account for situations when a lessor elects under section 48(d) to treat the lessee as having acquired the automobile allowing the lessee to claim the investment credit. The Internal Revenue Service plans to issue an announcement in the near future that will provide a separate set of limitations applicable to lessees to whom lessors have passed through the investment credit.

Additionally, as issued on October 19, 1984, § 1.280F-6T(b)(3) provided that one category of listed property, property of a type generally used for purposes of entertainment, recreation, or amusement, includes photographic, phonographic, communication, and video recording equipment. That section is amended to exclude that equipment in general from the definition of listed property if it is used exclusively at a regular business establishment or in connection with a taxpayer's principal trade or business. If any equipment is not listed property, it is not subject to the substantiation requirements imposed by section 274(d)(4).

#### Fringe Benefits

Section 61 of the Code provides that gross income includes "all income from

whatever source derived," unless specifically excluded by another provision of the Code. In addition, section 61 specifies that gross income includes compensation for services. Section 531 of the 1984 Act clarified that fringe benefits are included in gross income as compensation for services and subject to income and employment taxes. Section 531 also provided an exclusion from gross income for the value of certain fringe benefits (such as no-additional-cost services, qualified employee discounts, working condition fringes, and de minimis fringes).

The temporary regulations under section 61 contain a special rule that may be used to value the commuting use of an employer-provided vehicle. As issued in January 1985, the temporary regulations provided that the special rule could not be used to value the commuting use of an employer-provided vehicle by an officer or five-percent owner of the employer. In February 1985, this restriction was amended to provide that the special rule could not be used to value commuting use (that occurs after March 22, 1985) by an officer or one-percent owner of the employer. This document simplifies the temporary regulations to provide that, for any commuting use that occurs during 1985, the special rule may not be used to value the commuting use of an employer-provided vehicle by an officer of five-percent owner of the employer.

For commuting use occurring after December 31, 1985, the temporary regulations provide that the special rule may not be used to value the commuting use of an employer-provided vehicle by a control employee. However, if a control employee is provided the commuting use of an employer-provided vehicle that is not an automobile (as defined in the regulations), the control employee may use the special rule. The regulations define a control employee separately for government and non-government employers. The Service and Treasury are interested in comments concerning the definition of control employee, especially the treatment of state and local executive officers as control employees. The definition of control employee prescribed for purposes of valuing the commuting use of an employer-provided vehicle will not apply to the valuation of flights on employer-provided aircraft.

The temporary regulations under section 132 clarify the relationship between the section 274 substantiation requirements and a section 132 working condition fringe. The regulations provide that neither an employer nor an employee may exclude the value of



property or services from an employee's income as a working condition fringe unless the substantiation requirements of either section 162 or 274 (whichever is applicable) are satisfied. In addition, the section 132 regulations provide that the special substantiation safe harbor rules provided in § 1.274-6T may be used by both employers and employees.

#### Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required.

A notice of proposed rulemaking is not required by 5 U.S.C. 553(d) for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

#### Drafting Information

The principal authors of these temporary regulations are Michel A. Dazé and Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from the other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

#### List of Subjects

26 CFR 1.61-1-1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

#### 26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

#### PART 1—[AMENDED]

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7905. \* \* \* Section 1.132-1T also issued under 26 U.S.C. 132; section 1.280F-5T also issued under 26 U.S.C. 280F(c).

**Par. 2.** Section 1.61-2T is amended by removing the heading immediately preceding Q/A-20, Q/A-20, and Q/A-21.

**Par. 3.** Section 1.61-2T is amended by adding a new heading immediately preceding Q/A-20, new Q/A-20, Q/A-20a, Q/A-20b, and Q/A-21 immediately after Q/A-19 to read as follows:

**§ 1.61-2T Questions and answers relating to the taxation of fringe benefits (temporary).**

#### Use of Employer-Provided Vehicles for Commuting

**Q-20:** Is there a special rule that taxpayers may use to value employer-provided vehicles which are not available for personal purposes other than commuting?

**A-20:** A special rule may be used to compute commuting value if the following criteria are met by employers and employees with respect to an employer-provided vehicle:

(a) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business.

(b) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle.

(c) The employer has established a written policy under which neither the employee, nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home).

(d) Except for de minimis personal use, neither the employee nor any individual whose use would be taxable to the employee uses the vehicle for any personal purpose other than commuting, and

(e) The employee required to use the vehicle for commuting is not a control employee of the employer (as defined in Q/A-20b of this section).

If the vehicle is a chauffeur-driven vehicle, the special rule of this Q/A-20 may not be used to value the commuting use of any passenger who commutes in the vehicle. The rule may be used, however, to value the commuting use of the chauffeur. For purposes of Q/A-20 through Q/A-22 of this section, the term "vehicle" means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. Except as otherwise provided in Q/A-

20a and Q/A-20b of this section, the term "vehicle" includes an automobile as defined in Q/A-11 of this section. For purposes of this section, the term "personal use" has the same meaning as prescribed in § 1.274-6T(e)(5).

**Q-20a:** What special effective dates apply to the criteria provided in Q/A-20 of this section?

**A-20a:** Notwithstanding anything in Q/A-20 of this section to the contrary—

(a) *Written policy not required in 1985.* The policy described in Q/A-20(c) of this section prohibiting personal use need not be written provided the commuting use being valued under the special rule occurs prior to January 1, 1986; and

(b) *Commuting during 1985.* For commuting use that occurs after December 31, 1984, but before January 1, 1986, Q/A-20(e) of this section shall be applied by substituting "an employee who is an officer or a five-percent owner of the employer" in lieu of "control employee." If the vehicle in which the employee is required to commute is not an automobile as defined in Q/A-11 of this section, neither the restrictions of Q/A-20(e) of this section (relating to control employees) nor the restrictions of this Q/A-20a(b) (relating to officers and five-percent owners) apply. For purposes of determining who is a 5-percent owner, any individual who owns (or is considered as owning) five or more percent of the fair market value of an entity (the "owned entity") is considered a five-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414(b), (c), or (m).

**Q-20b:** Who is a "control employee" for purposes of determining the value of the availability of an employer-provided vehicle for commuting?

**A-20b:** (a) *Non-government employer.* For purposes of Q/A-20 of this section, a control employee of a non-government employer is any employee—

(1) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer,

(2) Who is a director of the employer, or

(3) Who owns a one-percent or greater equity, capital, or profits interest in the employer.

For purposes of determining who is a one-percent owner under paragraph (a)(3) of this Q/A-20b, any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) one percent or more of the fair market value of an entity (the "owned entity") is considered a one-percent owner of all entities which



would be aggregated with the owned entity under the rules of section 414(b), (c), (m), or (o).

(b) *Government employer.* For purposes of Q/A-20 of this section, a control employee of a government employer is any—

- (1) Elected official,
- (2) Federal employee who is appointed by the President and confirmed by the Senate, or
- (3) State or local executive officer comparable to individuals described in paragraph (b)(1) and (2) of this Q/A-20b.

For purposes of this Q/A-20b, the term "government" includes any Federal, state, or local governmental unit, and any agency or instrumentality thereof.

(c) *Control employee exception.* Notwithstanding anything in this section to the contrary, an employee who is a control employee may use the special valuation rule of Q/A-20 of this section if the criteria of Q/A-20 are satisfied (except for the condition in Q/A-20(e) of this section) and the vehicle in which the control employee is required to commute is not an automobile as defined in Q/A-11 of this section.

Q-21: If the requirements of Q/A-20 of this section are satisfied, what is the special rule for valuing the commuting use of an employer-provided vehicle?

A-21: Under the special rule, the commuting use is valued at \$1.50 per one-way commute (e.g., from home to work or from work to home). If there is more than one employee who commutes in the vehicle, such as in the case of an employer-sponsored car pool, the amount includible in the income of each such employee is \$1.50 per one-way commute. Thus, the amount includible for each round-trip commute is \$3.00 per employee.

Par. 4. Section 1.132-1T is amended by adding new Q/A-4a and Q/A-4b immediately after Q/A-4 to read as follows:

**§ 1.132-1T Questions and answers relating to the exclusion from gross income of certain fringe benefits (temporary).**

*Working Condition Fringe*

Q-4a: Do section 162 and section 274(d) and the regulations thereunder apply in determining the amount, if any, of an employee's working condition fringe with respect to employer-provided property or services?

A-4a: Yes, as provided below.

(a) *In general.* The value of property or services provided to an employee by an employer may not be excluded from

the employee's gross income as a working condition fringe, by either the employer or the employee, unless the substantiation requirements of either section 162 or section 274(d) (whichever is applicable) and the regulations thereunder are satisfied.

(b) *Listed property.* With respect to listed property (as defined in section 280F(d)(4)), the substantiation requirements of section 274(d) and the regulations thereunder do not apply to the determination of an employee's working condition fringe exclusion prior to the first taxable year of the employer beginning in 1986. For example, if an employer's first taxable year beginning in 1986 begins on July 1, the substantiation requirements of section 274(d) apply to the employee as of that date. The substantiation requirements of section 274(d) apply generally to an employee regardless of whether the requirements of section 274 apply to the employee's employer (such as when the employer is a tax-exempt organization); in these cases, the requirements of section 274(d) apply to the employee as of January 1, 1986.

In general, the substantiation requirements of section 274(d) are satisfied by adequate records or sufficient evidence corroborating the employee's own statement. Thus, such records or evidence provided by the employee, and relied upon by the employer to the extent permitted by the regulations promulgated under section 274(d), will be sufficient to substantiate a working condition fringe exclusion.

(c) *Safe harbor rules.* Section 1.274-6T provides that the substantiation requirements of section 274(d) and the regulations thereunder may be satisfied, in certain circumstances, by using one or more of the safe harbor rules prescribed in § 1.274-6T. If the employer uses one of the safe harbor rules prescribed in § 1.274-6T during a period with respect to a vehicle (as defined in § 1.61-2T Q/A-20), that rule must be used by the employer to substantiate a working condition fringe exclusion with respect to that vehicle during the period. An employer that is exempt from Federal income tax may still use one of the safe harbor rules (if the requirements of that section are otherwise met during a period) to substantiate a working condition fringe exclusion with respect to the same vehicle during the period. If the employer uses one of the methods prescribed in § 1.274-6T during a period with respect to an employer-provided vehicle, that method may be used by an employee to substantiate a working condition fringe exclusion with respect to the same vehicle during the period, as long as the employee includes in gross

income the amount allocated to the employee pursuant to § 1.274-6T and this section. If, however, the employer uses the safe harbor rule prescribed in § 1.274-6T(a)(2) or (3) and the employee without the employer's knowledge uses the vehicle for purposes other than de minimis personal use (in the case of the rule prescribed in § 1.274-6T(a)(2)), or for purposes other than de minimis personal use and commuting (in the case of the rule prescribed in § 1.274-6T(a)(3)), then the employee has additional gross income.

The rules prescribed in this Q/A-4a assume that the safe harbor rules prescribed in § 1.274-6T are used for a one-year period. Accordingly, references to the value of the availability of a vehicle, amounts excluded as a working condition fringe, etc., are based on a one-year period. If the safe harbor rules prescribed in § 1.274-6T are used for a period of less than a year, the amounts referenced in the previous sentence must be adjusted accordingly. For purposes of this section, the term "personal use" has the same meaning as prescribed in § 1.274-6T(e)(5).

(d) *Vehicles not available to employees for personal use.* For a vehicle described in § 1.274-6T(a)(2) (relating to certain vehicles not used for personal purposes), the working condition fringe exclusion is equal to the value of the availability of the vehicle if the employer uses the method prescribed in § 1.274-6T(a)(2).

(e) *Vehicles not available to employees for personal use other than commuting.* For a vehicle described in § 1.274-6T(a)(3) (relating to certain vehicles not used for personal purposes other than commuting), the working condition fringe exclusion is equal to the value of the availability of the vehicle for purposes other than commuting if the employer uses the method prescribed in § 1.274-6T(a)(3). The rule applies only if the special rule for valuing commuting use, as prescribed in Q/A-20 through A/A-22 of § 1.61-2T, is used and the amount determined under the special rule is included in the employee's income (or the employee reimburses the employer for such amount).

(f) *Vehicles used in connection with the business of farming that are available to employees for personal use.* For a vehicle described in § 1.274-6T(b) (relating to certain vehicles used in connection with the business of farming), the working condition fringe exclusion is calculated by multiplying the value of the availability of the vehicle by 75 percent.

If the vehicle is available to more than one individual, the employer must



allocate the gross income attributable to the vehicle (25 percent of the value of the availability of the vehicle) among the employees (and other individuals whose use would not be attributed to an employee) to whom the vehicle was available. This allocation must be done in a reasonable manner to reflect the personal use of the vehicle by the individuals. Amounts that would be allocated to individuals who are not employees (such as a sole proprietor) reduce the amount that may be allocated to employees but are otherwise to be disregarded for purposes of this Q/A-4a.

For purposes of this Q/A-4a9f, the value of the availability of a vehicle may be calculated as if the vehicle had been available to only one employee continuously and without regard to any working condition fringe exclusion.

The following examples illustrate a reasonable allocation of gross income with respect to an employer-provided vehicle between two employees:

**Example (1).** Assume that two farm employees share the use of a vehicle which for a calendar year is regularly used directly in connection with the business of farming and qualified for use of the rule in § 1.274-6T(b). Employee A uses the vehicle in the morning directly in connection with the business of farming and employee B uses the vehicle in the afternoon directly in connection with the business of farming. Assume further that employee B takes the vehicle home in the evenings and weekends. The employer should allocate all the income attributable to the availability of the vehicle to employee B.

**Example (2).** Assume that for a calendar year, farm employees C and D share the use of a vehicle that is regularly used directly in connection with the business of farming and qualifies for use of the rule in § 1.274-6T(b). Assume further that the employees alternate taking the vehicle home in the evening and alternate the availability to use the vehicle for personal purposes on weekends. The employer should allocate the income attributable to the availability of the vehicle for personal use (25 percent of the value of the availability of the vehicle) equally between the two employees.

**Example (3).** Assume the same facts as in example (2) except that C is the sole proprietor of the farm. Based on these facts, C should allocate the same amount of income to D as was allocated to D in example (2). No

other income attributable to the availability of the vehicle for personal use should be allocated.

**Q-4b:** What special rule applies with respect to the use of qualified nonpersonal use vehicles?

**A-4b:** Effective January 1, 1985, one hundred percent of the value of the use of a qualified nonpersonal use vehicle (as described in § 1.274-5T(k)) is excluded from gross income as a working condition fringe, provided that, in the case of vehicles described in paragraph (k)(3) through (7) of that section, the use of the vehicles conforms to the requirements of that paragraph.

**Par. 5.** Section 1.162-25T is revised to read as follows:

**§ 1.162-25T Deductions with respect to noncash fringe benefits (temporary).**

(a) **Employer.** If an employer includes the value of a noncash fringe benefit in an employee's gross income, the employer may not deduct this amount as compensation for services, but rather may deduct only the costs incurred by the employer in providing the benefit to the employee. The employer may be allowed a cost recovery deduction under section 168 or a deduction under section 179 for an expense not chargeable to capital account, or, if the noncash fringe benefit is property leased by the employer, a deduction for the ordinary and necessary business expense of leasing the property.

(b) **Employee.** If an employer provides the use of a vehicle (as defined in § 1.61-2T Q/A-20) to an employee as a noncash fringe benefit and includes the entire value of the benefit in an employee's gross income without taking into account any exclusion for a working condition fringe allowable under section 132 and the regulations thereunder, the employee may deduct, for purposes of determining adjusted gross income, that value multiplied by the percentage of the total use of the vehicle that is in connection with the employer's trade or business. If the employer determines the value of the noncash fringe benefit under a special accounting rule that allows the employer to treat the value of benefits provided

during the last two months of the calendar year or any shorter period as paid during the subsequent calendar year, then the employee must determine the deduction allowable under this paragraph (b) without regard to any use of the benefit during those last two months or any shorter period. The employee may not use a cents-per-mile valuation method to determine the deduction allowable under this paragraph (b).

(c) **Examples.** The following examples illustrate the provisions of this section.

**Example (1).** On January 1, 1986, X Company owns and provides the use of an automobile with a fair market value of \$20,000 to E, an employee, for the entire calendar year. Both X and E compute taxable income on the basis of the calendar year. Seventy percent of the use of the automobile by E is in connection with X's trade or business. If X uses the special rule provided in § 1.61-2T for valuing the availability of the automobile and takes into account the amount excludable as a working condition fringe, X would include \$1,680 (\$5,600, the Annual Lease Value, less 70 percent of \$5,600) in E's gross income for 1986. X may not deduct the amount included in E's income as compensation for services. X may, however, determine a cost recovery deduction under section 168, subject to the limitations under section 280F, for taxable year 1986.

**Example (2).** The facts are the same as in example (1), except that X includes \$5,600 in E's gross income, the value of the noncash fringe benefit without taking into account the amount excludable as a working condition fringe. X may not deduct that amount as compensation for services, but may determine a cost recovery deduction under section 168, subject to the limitations under section 280F. For purposes of determining adjusted gross income, E may deduct \$3,920 (\$5,600 multiplied by the percent of business use).

**Editorial Note.** The text of new regulations § 1.274-5T, set forth on pages 41 through 86 of this Treasury Decision, includes numerous instances of heavy underlining that is visually distinguishable from the underlining that is used to indicate italics. The heavy underlining shows the changes from regulations § 1.274-5 to regulations § 1.274-5T. The underlining is not part of the text of the regulations.

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be determined, the court should make a close approximation and not disallow the deduction entirely. Section 274 (d) contemplates that no deduction or credit shall be allowed a taxpayer on the basis of such approximations or unsupported testimony of the taxpayer. For purposes of this section, the term "entertainment" means entertainment, amusement, or recreation, and use of a facility therefor; and the term "expenditure" includes expenses and items (including items such as losses and depreciation).

(b) Elements of an expenditure or use--(1) In general. Section 274 (d) and this section contemplate that no deduction or credit shall be allowed for travel, entertainment, a gift, or with respect to listed property unless the taxpayer substantiates the requisite elements of each expenditure or use as set forth in this paragraph (b).

(2) Travel away from home. The elements to be proved with respect to an expenditure for travel away from home are--

(i) Amount. Amount of each separate expenditure for traveling away from home, such as cost of transportation or lodging, except that the daily cost of the traveler's own breakfast, lunch, and dinner and of expenditures incidental to such travel may be

Par. 6. New § 1.274-5T is added in the appropriate place and reads as follows:

§ 1.274-5T Substantiation requirements (temporary).

(a) In general. For taxable years beginning on or after January 1, 1985, no deduction or credit shall be allowed with respect to--

(1) Traveling away from home (including meals and lodging),

(2) Any activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity, including the items specified in section 274 (e),

(3) Gifts defined in section 274 (b), or

(4) Any listed property (as defined in section 280F (d) (4) and § 1.280F-6T (b)),

unless the taxpayer substantiates each element of the expenditure or use (as described in paragraph (b) of this section) in the manner provided in paragraph (c) of this section. This limitation supersedes the doctrine founded in Cohan v. Commissioner, 39 F.2d 540 (2d Cir. 1930). The decision held that, where the evidence indicated a taxpayer incurred deductible travel or entertainment expenses but the exact amount could not



expected to be derived as a result of the entertainment and, except in the case of business meals described in section 274 (e) (1), the nature of any business discussion or activity;

(v) Business relationship. Occupation or other information relating to the person or persons entertained, including name, title, or other designation, sufficient to establish business relationship to the taxpayer.

(4) Entertainment directly preceding or following a substantial and bona fide business discussion. If a taxpayer claims a deduction for entertainment directly preceding or following a substantial and bona fide business discussion on the ground that such entertainment was associated with the active conduct of the taxpayer's trade or business, the elements to be proved with respect to such expenditure, in addition to those enumerated in paragraph (b) (3) (i), (ii), (iii), and

(v) of this section are--

(i) Time. Date and duration of business

discussion;

(ii) Place. Place of business discussion;

(iii) Business purpose. Nature of business

discussion, and business reason for the entertainment or

aggregated, if set forth in reasonable categories, such as for meals, for gasoline and oil, and for taxi fares;

(ii) Time. Dates of departure and return for each trip away from home, and number of days away from home spent on business;

(iii) Place. Destinations or locality of travel, described by name of city or town or other similar designation; and

(iv) Business purpose. Business reason for travel or nature of the business benefit derived or expected to be derived as a result of travel.

(3) Entertainment in general. The elements to be proved with respect to an expenditure for entertainment are--

(i) Amount. Amount of each separate expenditure for entertainment, except that such incidental items as taxi fares or telephone calls may be aggregated on a daily basis;

(ii) Time. Date of entertainment;

(iii) Place. Name, if any, address or location,

and designation of type of entertainment, such as dinner or theater, if such information is not apparent from the designation of the place;

(iv) Business purpose. Business reason for the entertainment or nature of business benefit derived or



nature of business benefit derived or expected to be derived as the result of the entertainment;

(iv) Business relationship. Identification of those persons entertained who participated in the business discussion.

(5) Gifts. The elements to be proved with respect to an expenditure for a gift are--

(i) Amount. Cost of the gift to the taxpayer;

(ii) Time. Date of the gift;

(iii) Description. Description of the gift;

(iv) Business purpose. Business reason for the gift or nature of business benefit derived or expected to be derived as a result of the gift; and

(v) Business relationship. Occupation or other information relating to the recipient of the gift, including name, title, or other designation, sufficient to establish business relationship to the taxpayer.

(6) Listed property. The elements to be proved with respect to any listed property are--

(i) Amount--(A) Expenditures. The amount of each separate expenditure with respect to an item of listed property, such as the cost of acquisition, the cost of capital improvements, lease payments, the cost of maintenance and repairs, or other expenditures, and

(B) Uses. The amount of each business/investment use (as defined in § 1.280F-6T (d) (3) and (e)), based on the appropriate measure (i.e., mileage for automobiles and other means of transportation and time for other listed property, unless the Commissioner approves an alternative method), and the total use of the listed property for the taxable period.

(ii) Time. Date of the expenditure or use with respect to listed property, and

(iii) Business or investment purpose. The business purpose for an expenditure or use with respect to any listed property (see

§ 1.274-5T (c) (6) (i) (B) and (C) for special rules for the aggregation of expenditures and business use and § 1.280F-6T (d) (2) for the distinction between qualified business use and business/investment use).

See also § 1.274-5T (e) relating to the substantiation of business use of employer-provided listed property and § 1.274-6T for special rules for substantiating the business/investment use of certain types of listed property.

(c) Rules of substantiation--(1) In general. Except as otherwise provided in this section and



designed to encourage taxpayers to maintain the records, together with documentary evidence, as provided in paragraph (c) (2) of this section.

(2) Substantiation by adequate records--(i) In general. To meet the "adequate records" requirements of section 274 (d), a taxpayer shall maintain an account book, diary, log, statement of expense, trip sheets, or similar record (as provided in paragraph (c) (2) (ii) of this section), and documentary evidence (as provided in paragraph (c) (2) (iii) of this section) which, in combination, are sufficient to establish each element of an expenditure or use specified in paragraph (b) of this section. It is not necessary to record information in an account book, diary, log, statement of expense, trip sheet, or similar record which duplicates information reflected on a receipt so long as the account book, etc. and receipt complement each other in an orderly manner.

(ii) Account book, diary, etc.. An account book, diary, log, statement of expense, trip sheet, or similar record must be prepared or maintained in such manner that each recording of an element of an expenditure or use is made at or near the time of the expenditure or use.

(A) Made at or near the time of the expenditure or use. For purposes of this section, the phrase "made at

§ 1.274-6T, a taxpayer must substantiate each element of an expenditure or use (described in paragraph (b) of this section) by adequate records or by sufficient evidence corroborating his own statement. Section 274 (d) contemplates that a taxpayer will maintain and produce such substantiation as will constitute proof of each expenditure or use referred to in section 274. Written evidence has considerably more probative value than oral evidence alone. In addition, the probative value of written evidence is greater the closer in time it relates to the expenditure or use. A contemporaneous log is not required, but a record of the elements of an expenditure or of a business use of listed property made at or near the time of the expenditure or use, supported by sufficient documentary evidence, has a high degree of credibility not present with respect to a statement prepared subsequent thereto when generally there is a lack of accurate recall. Thus, the corroborative evidence required to support a statement not made at or near the time of the expenditure or use must have a high degree of probative value to elevate such statement and evidence to the level of credibility reflected by a record made at or near the time of the expenditure or use supported by sufficient documentary evidence. The substantiation requirements of section 274 (d) are



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will vary depending upon the facts and circumstances of each case. Where the business purpose is evident from the surrounding facts and circumstances, a written explanation of such business purpose will not be required. For example, in the case of a salesman calling on customers on an established sales route, a written explanation of the business purpose of such travel ordinarily will not be required. Similarly, in the case of a business meal described in section 274 (e) (1), if the business purpose of such meal is evident from the business relationship to the taxpayer of the persons entertained and other surrounding circumstances, a written explanation of such business purpose will not be required.

(C) Substantiation of business use of listed property--(1) Degree of substantiation. In order to constitute an adequate record (within the meaning of section 274 (d) and this paragraph (c) (2) (ii)), which substantiates business/investment use of listed property (as defined in § 1.280P-6T (d) (3)), the record must contain sufficient information as to each element of every business/investment use. However, the level of detail required in an adequate record to substantiate business/investment use may vary depending upon the facts and circumstances. For example, a taxpayer who

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or near the time of the expenditure or use means the elements of an expenditure or use are recorded at a time when, in relation to the use or making of an expenditure, the taxpayer has full present knowledge of each element of the expenditure or use, such as the amount, time, place, and business purpose of the expenditure and business relationship. An expense account statement which is a transcription of an account book, diary, log, or similar record prepared or maintained in accordance with the provisions of this paragraph (c) (2) (ii) shall be considered a record prepared or maintained in the manner prescribed in the preceding sentence if such expense account statement is submitted by an employee to his employer or by an independent contractor to his client or customer in the regular course of good business practice. For example, a log maintained on a weekly basis, which accounts for use during the week, shall be considered a record made at or near the time of such use.

(B) Substantiation of business purpose. In order to constitute an adequate record of business purpose within the meaning of section 274 (d) and this paragraph (c) (2), a written statement of business purpose generally is required. However, the degree of substantiation necessary to establish business purpose



(iii) Documentary evidence. Documentary evidence, such as receipts, paid bills, or similar evidence sufficient to support an expenditure shall be required for--

(A) Any expenditure for lodging while traveling away from home, and

(B) Any other expenditure of \$25 or more, except, for transportation charges, documentary evidence will not be required if not readily available,

provided, however, that the Commissioner, in his discretion, may prescribe rules waiving such requirements in circumstances where he determines it is impracticable for such documentary evidence to be required. Ordinarily, documentary evidence will be considered adequate to support an expenditure if it includes sufficient information to establish the amount, date, place, and the essential character of the expenditure. For example, a hotel receipt is sufficient to support expenditures for business travel if it contains the following: name, location, date, and separate amounts for charges such as for lodging, meals, and telephone. Similarly, a restaurant receipt is sufficient to support an expenditure for a business meal if it contains the following: name and location of the

uses a truck for both business and personal purposes and whose only business use of a truck is to make deliveries to customers on an established route may satisfy the adequate record requirement by recording the total number miles driven during the taxable year, the length of the delivery route once, and the date of each trip at or near the time of the trips. Alternatively, the taxpayer may establish the date of each trip with a receipt, record of delivery, or other documentary evidence.

(2) Written record. Generally, an adequate record must be written. However, a record of the business use of listed property, such as a computer or automobile, prepared in a computer memory device with the aid of a logging program will constitute an adequate record.

(D) Confidential information. If any information relating to the elements of an expenditure or use, such as place, business purpose, or business relationship, is of a confidential nature, such information need not be set forth in the account book, diary, log, statement of expense, trip sheet, or similar record, provided such information is recorded at or near the time of the expenditure or use and is elsewhere available to the district director to substantiate such element of the expenditure or use.



restaurant, the date and amount of the expenditure, the number of people served, and, if a charge is made for an item other than meals and beverages, an indication that such is the case. A document may be indicative of only one (or part of one) element of an expenditure. Thus, a cancelled check together with a bill from the payee, ordinarily would establish the element of cost. In contrast, a cancelled check drawn payable to a named payee would not by itself support a business expenditure without other evidence showing that the check was used for a certain business purpose.

(iv) Retention of written evidence. The Commissioner may, in his discretion, prescribe rules under which an employer may dispose of the adequate records and documentary evidence submitted to him by employees who are required to, and do, make an adequate accounting to the employer (within the meaning of paragraph (f) (4) of this section) if the employer maintains adequate accounting procedures with respect to such employees (within the meaning of paragraph (f) (5) of this section).

(v) Substantial compliance. If a taxpayer has not fully substantiated a particular element of an expenditure or use, but the taxpayer establishes to the satisfaction of the district director that he has

substantially complied with the "adequate records" requirements of this paragraph (c) (2) with respect to the expenditure or use, the taxpayer may be permitted to establish such element by evidence which the district director shall deem adequate.

(3) Substantiation by other sufficient evidence--  
(i) In general. If a taxpayer fails to establish to the satisfaction of the district director that he has substantially complied with the "adequate records" requirements of paragraph (c) (2) of this section with respect to an element of an expenditure or use, then, except as otherwise provided in this paragraph, the taxpayer must establish such element--

(A) By his own statement, whether written or oral, containing specific information in detail as to such element; and

(B) By other corroborative evidence sufficient to establish such element.

If such element is the description of a gift, or the cost or amount, time, place, or date of an expenditure or use, the corroborative evidence shall be direct evidence, such as a statement in writing or the oral testimony of persons entertained or other witnesses setting forth detailed information about such element, or the documentary evidence described in



paragraph (c) (2) of this section. If such element is either the business relationship to the taxpayer of persons entertained, or the business purpose of an expenditure, the corroborative evidence may be circumstantial evidence.

(ii) Sampling--(A) In general. Except as provided in paragraph (c) (3) (ii) (B) of this section, a taxpayer may maintain an adequate record for portions of a taxable year and use that record to substantiate the business/investment use of listed property for all or a portion of the taxable year if the taxpayer can demonstrate by other evidence that the periods for which an adequate record is maintained are representative of the use for the taxable year or a portion thereof.

(B) Exception for pooled vehicles. The sampling method of paragraph (c) (3) (ii) (A) of this section may not be used to substantiate the business/investment use of an automobile or other vehicle of an employer that is made available for use by more than one employee for all or a portion of a taxable year.

(C) Examples. The following examples illustrate this paragraph (c) (3) (ii).

Example (1). A, a sole proprietor and calendar year taxpayer, operates an interior decorating business out of her home. A uses an automobile for local business travel to visit the homes or offices of clients, to meet with suppliers and other subcontractors, and to pick up and deliver certain items

to clients when feasible. There is no other business use of the automobile but A and other members of her family also use the automobile for personal purposes. A maintains adequate records for the first three months of 1986 that indicate that 75 percent of the use of the automobile was in A's business. Invoices from subcontractors and paid bills indicate that A's business continued at approximately the same rate for the remainder of 1986. If other circumstances do not change (e.g., A does not obtain a second car for exclusive use in her business), the determination that the business/investment use of the automobile for the taxable year is 75 percent is based on sufficient corroborative evidence.

Example (2). The facts are the same as in example (1), except that A maintains adequate records during the first week of every month, which indicate that 75 percent of the use of the automobile is in A's business. The invoices from A's business indicate that A's business continued at the same rate during the subsequent weeks of each month so that A's weekly records are representative of each month's business use of the automobile. Thus, the determination that the business/investment use of the automobile for the taxable year is 75 percent is based on sufficient corroborative evidence.

Example (3). B, a sole proprietor and calendar year taxpayer, is a salesman in a large metropolitan area for a company that manufactures household products. For the first three weeks of each month, B uses his own automobile occasionally to travel within the metropolitan area on business. During these three weeks, B's use of the automobile for business purposes does not follow a consistent pattern from day to day or week to week. During the fourth week of each month, B delivers to his customers all the orders taken during the previous month. B's use of his automobile for business purposes, as substantiated by adequate records, is 70 percent of the total use during that fourth week. In this example, a determination based on the records maintained during that fourth week that the business/investment use of the automobile for the taxable year is 70 percent is not based on sufficient corroborative evidence because use during this week is not representative of use during other periods.



(iii) Special rules. See § 1.274-6T for special rules for substantiation by sufficient corroborating evidence with respect to certain listed property.

(4) Substantiation in exceptional circumstances. If a taxpayer establishes that, by reason of the inherent nature of the situation--

(i) He was unable to obtain evidence with respect to an element of the expenditure or use which conforms fully to the "adequate records" requirements of paragraph (c) (2) of this section,

(ii) He is unable to obtain evidence with respect to such element which conforms fully to the "other sufficient evidence" requirements of paragraph (c) (3) of this section, and

(iii) He has presented other evidence, with respect to such element, which possesses the highest degree of probative value possible under the circumstances, such other evidence shall be considered to satisfy the substantiation requirements of section 274 (d) and this paragraph.

(5) Loss of records due to circumstances beyond control of the taxpayer. Where the taxpayer establishes that the failure to produce adequate records is due to the loss of such records through circumstances beyond the taxpayer's control, such as destruction by fire,

flood, earthquake, or other casualty, the taxpayer shall have a right to substantiate a deduction by reasonable reconstruction of his expenditures or use.

(6) Special rules--(i) Separate expenditure or use--(A) In general. For the purposes of this section, each separate payment or use by the taxpayer shall ordinarily be considered to constitute a separate expenditure. However, concurrent or repetitious expenses or uses may be substantiated as a single item.

To illustrate the above rules, where a taxpayer entertains a business guest at dinner and thereafter at the theater, the payment for dinner shall be considered to constitute one expenditure and the payment for the tickets for the theater shall be considered to constitute a separate expenditure. Similarly, if during a day of business travel a taxpayer makes separate payments for breakfast, lunch, and dinner, he shall be considered to have made three separate expenditures. However, if during entertainment at a cocktail lounge the taxpayer pays separately for each serving of refreshments, the total amount expended for the refreshments will be treated as a single expenditure. A tip may be treated as a separate expenditure.

(B) Aggregation of expenditures. Except as otherwise provided in this section, the account book,



(C) Aggregation of business use. Uses which may be considered part of a single use, for example, a round trip or uninterrupted business use, may be accounted for by a single record. For example, use of a truck to make deliveries at several different locations which begins and ends at the business premises and which may include a stop at the business premises in between two deliveries may be accounted for by a single record of miles driven. In addition, use of a passenger automobile by a salesman for a business trip away from home over a period of time may be accounted for by a single record of miles traveled. De minimis personal use (such as a stop for lunch on the way between two business stops) is not an interruption of business use.

(ii) Allocation of expenditure. For purposes of this section, if a taxpayer has established the amount of an expenditure, but is unable to establish the portion of such amount which is attributable to each person participating in the event giving rise to the expenditure, such amount shall ordinarily be allocated to each participant on a pro rata basis, if such determination is material. Accordingly, the total number of persons for whom a travel or entertainment expenditure is incurred must be established in order to

diary, log, statement of expense, trip sheet, or similar record required by paragraph (c) (2) (ii) of this section shall be maintained with respect to each separate expenditure and not with respect to aggregate amounts for two or more expenditures. Thus, each expenditure for such items as lodging and air or rail travel shall be recorded as a separate item and not aggregated. However, at the option of the taxpayer, amounts expended for breakfast, lunch, or dinner, may be aggregated. A tip or gratuity which is related to an underlying expense may be aggregated with such expense. In addition, amounts expended in connection with the use of listed property during a taxable year, such as for gasoline or repairs for an automobile, may be aggregated. If these expenses are aggregated, the taxpayer must establish the date and amount, but need not prove the business purpose of each expenditure. Instead, the taxpayer may prorate the expenses based on the total business use of the listed property. For other provisions permitting recording of aggregate amounts in an account book, diary, log, statement of expense, trip sheet, or similar record, see paragraphs (b) (2) (1) and (b) (3) of this section (relating to incidental costs of travel and entertainment).



compute the portion of the expenditure allocable to each such person.

(iii) Primary use of a facility. Sec-

tion 274 (a) (1) (B) and (2) (C) deny a deduction for any expenditure paid or incurred before January 1, 1979, with respect to a facility, or paid or incurred at any time with respect to a club, used in connection with an entertainment activity unless the taxpayer establishes that the facility (including a club) was used primarily for the furtherance of the taxpayer's trade or business. A determination whether a facility before January 1, 1979, or a club at any time, was used primarily for the furtherance of the taxpayer's trade or business will depend upon the facts and circumstances of each case.

In order to establish that a facility was used primarily for the furtherance of his trade or business, the taxpayer shall maintain records of the use of the facility, the cost of using the facility, mileage or its equivalent (if appropriate), and such other information as shall tend to establish such primary use. Such records of use shall contain--

(A) For each use of the facility claimed to be in furtherance of the taxpayer's trade or business, the elements of an expenditure specified in paragraph (b) (3) of this section, and

(B) For each use of the facility not in furtherance of the taxpayer's trade or business, an appropriate description of such use, including cost, date, number of persons entertained, nature of entertainment and, if applicable, information such as mileage or its equivalent. A notation such as "personal use" or "family use" would, in the case of such use, be sufficient to describe the nature of entertainment.

If a taxpayer fails to maintain adequate records concerning a facility which is likely to serve the personal purposes of the taxpayer, it shall be presumed that the use of such facility was primarily personal.

(iv) Additional information. In a case where it is necessary to obtain additional information, either--

(A) To clarify information contained in records, statements, testimony, or documentary evidence submitted by a taxpayer under the provisions of paragraph (c) (2) or (c) (3) of this section, or

(B) To establish the reliability or accuracy of such records, statements, testimony, or documentary evidence,

the district director may, notwithstanding any other provision of this section, obtain such additional



under which any taxpayer claiming a deduction or credit for entertainment, gifts, travel, or with respect to listed property, or any other person receiving advances, reimbursements, or allowances for such items, shall make disclosure on his tax return with respect to such items. The provisions of this paragraph shall apply notwithstanding the provisions of paragraph (f) of this section.

(2) Business use of passenger automobiles and other vehicles. (i) On returns for taxable years beginning after December 31, 1984, taxpayers that claim a deduction or credit with respect to any vehicle are required to answer certain questions providing information about the use of the vehicle. The information required on the tax return relates to mileage (total, business, commuting, and other personal mileage), percentage of business use, date placed in service, use of other vehicles, after-work use, whether the taxpayer has evidence to support the business use claimed on the return, and whether or not the evidence is written.

(ii) Any employer that provides the use of a vehicle to an employee must obtain information from the employee sufficient to complete the employer's tax return. Any employer that provides more than five

information by personal interview or otherwise as he determines necessary to implement properly the provisions of section 274 and the regulations thereunder.

(7) Specific exceptions. Except as otherwise prescribed by the Commissioner, substantiation otherwise required by this paragraph is not required for--

(i) Expenses described in section 274 (e) (2) relating to food and beverages for employees, section 274 (e) (3) relating to expenses treated as compensation, section 274 (e) (8) relating to items available to the public, and section 274 (e) (9) relating to entertainment sold to customers, and

(ii) Expenses described in section 274 (e) (5) relating to recreational, etc., expenses for employees, except that a taxpayer shall keep such records or other evidence as shall establish that such expenses were for activities (or facilities used in connection therewith) primarily for the benefit of employees other than employees who are officers, shareholders or other owners (as defined in section 274 (e) (5)), or highly compensated employees.

(d) Disclosure on returns--(1) In general. The Commissioner may, in his discretion, prescribe rules



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- (i) The date that the property was placed in service.
- (ii) The percentage of business use.
- (iii) Whether evidence is available to support the percentage of business use claimed on the return, and
- (iv) Whether the evidence is written.
- (e) Substantiation of the business use of listed property made available by an employer for use by an employee--(1) Employee--(i) In general. An employee may not exclude from gross income as a working condition fringe any amount of the value of the availability of listed property provided by an employer to the employee, unless the employee substantiates for the period of availability the amount of the exclusion in accordance with the requirements of section 274 (d) and either this section or § 1.274-6T.

(ii) Vehicles treated as used entirely for personal purposes. If an employer includes the value of the availability of a vehicle (as defined in § 1.61-2T Q/A-20) in an employee's gross income without taking into account any exclusion for a working condition fringe allowable under section 132 and the regulations thereunder with respect to the vehicle, the employee must substantiate any deduction claimed under

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vehicles to its employees need not include any information on its return. The employer, instead, must obtain the information from its employees, indicate on its return that it has obtained the information, and retain the information received. Any employer--

(A) That can satisfy the requirements of § 1.274-6T (a) (2), relating to vehicles not used for personal purposes,

(B) That can satisfy the requirements of § 1.274-6T (a) (3), relating to vehicles not used for personal purposes other than commuting, or

(C) That treats all use of vehicles by employees as personal use need not obtain information with respect to those vehicles, but instead must indicate on its return that it has vehicles exempt from the requirements of this paragraph (d) (2).

(3) Business use of other listed property. On returns for taxable years beginning after December 31, 1984, taxpayers that claim a deduction or credit with respect to any listed property other than a vehicle (for example, a yacht, airplane, or certain computers) are required to provide the following information:



sufficient evidence unless the employer knows or has reason to know that the statement, records, or other evidence are not accurate. The employer must retain a copy of the adequate records maintained by the employee or the other sufficient evidence, if available.

Alternatively, the employer may rely on a statement submitted by the employee that provides sufficient information to allow the employer to determine the business/investment use of the property unless the employer knows or has reason to know that the statement is not based on adequate records or on the employee's own statement corroborated by other sufficient evidence. If the employer relies on the employee's statement, the employer must retain only a copy of the statement. The employee must retain a copy of the adequate records or other evidence.

(f) Reporting and substantiation of expenses of certain employees for travel, entertainment, gifts, and with respect to listed property--(1) In general. The purpose of this paragraph is to provide rules for reporting and substantiation of certain expenses paid or incurred by employees in connection with the performance of services as employees. For purposes of this paragraph, the term "business expenses" means ordinary

§ 1.162-25T for the business/investment use of the vehicle in accordance with the requirements of section 274 (d) and either this section or § 1.274-6T.

(2) Employer--(i) In general. An employer substantiates its business/investment use of listed property by showing either--

(A) That, based on evidence that satisfies the requirements of section 274 (d) or statements submitted by employees that summarize such evidence, all or a portion of the use of the listed property is by employees in the employer's trade or business and, if any employee used the property for personal purposes, the employer included an appropriate amount in the employee's income, or

(B) In the case of a vehicle, the employer treats all use by employees as personal use and includes an appropriate amount in the employees' income.

(ii) Reliance on employee records. For purposes of substantiating the business/investment use of listed property that an employer provides to an employee and for purposes of the information required by paragraph (d) (2) and (3) of this section, the employer may rely on adequate records maintained by the employee or on the employee's own statement if corroborated by other



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his employer (as defined in paragraph (f) (4) of this section) and which are charged directly or indirectly to the employer (for example, through credit cards) or for which the employee is paid through advances, reimbursements, or otherwise, provided that the total amount of such advances, reimbursements, and charges is equal to such expenses.

(ii) Reimbursements in excess of expenses. In case the total of the amounts charged directly or indirectly to the employer or received from the employer as advances, reimbursements, or otherwise, exceeds the business expenses paid or incurred by the employee and the employee is required to, and does, make an adequate accounting to his employer for such expenses, the employee must include such excess (including amounts received for expenditures not deductible by him) in income.

(iii) Expenses in excess of reimbursements. If an employee incurs deductible business expenses on behalf of his employer which exceed the total of the amounts charged directly or indirectly to the employer and received from the employer as advances, reimbursements, or otherwise, and the employee makes an adequate accounting to his employer, the employee must be able to substantiate any deduction for such excess with such

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and necessary expenses for travel, entertainment, gifts, or with respect to listed property which are deductible under section 162, and the regulations thereunder, to the extent not disallowed by sections 262, 274 (c), and 280F. Thus, the term "business expenses" does not include personal, living, or family expenses disallowed by section 262, travel expenses disallowed by section 274 (c), or cost recovery deductions and credits with respect to listed property disallowed by section 280F (d) (3) because the use of such property is not for the convenience of the employer and required as a condition of employment. Except as provided in paragraph (f) (2), advances, reimbursements, or allowances for such expenditures must be reported as income by the employee.

(2) Reporting of expenses for which the employee is required to make an adequate accounting to his employer--(i) Reimbursements equal to expenses. For purposes of computing tax liability, an employee need not report on his tax return business expenses for travel, transportation, entertainment, gifts, or with respect to listed property, paid or incurred by him solely for the benefit of his employer for which he is required to, and does, make an adequate accounting to



accounting means the submission to the employer of an account book, diary, log, statement of expense, trip sheet, or similar record maintained by the employee in which the information as to each element of an expenditure or use (described in paragraph (b) of this section) is recorded at or near the time of the expenditure or use, together with supporting documentary evidence, in a manner which conforms to all the "adequate records" requirements of paragraph (c) (2) of this section. An adequate accounting requires that the employee account for all amounts received from his employer during the taxable year as advances, reimbursements, or allowances (including those charged directly or indirectly to the employer through credit cards or otherwise) for travel, entertainment, gifts, and the use of listed property. The methods of substantiation allowed under paragraph (c) (4) or (c) (5) of this section also will be considered to be an adequate accounting if the employer accepts an employee's substantiation and establishes that such substantiation meets the requirements of such paragraph (c) (4) or (c) (5). For purposes of an adequate accounting, the method of substantiation allowed under paragraph (c) (3) of this section will not be permitted.

records and supporting evidence as will substantiate each element of an expenditure (described in paragraph (b) of this section) in accordance with paragraph (c) of this section.

(3) Reporting of expenses for which the employee is not required to make an adequate accounting to his employer. If the employee is not required to make an adequate accounting to his employer for his business expenses or, though required, fails to make an adequate accounting for such expenses, he must submit, as a part of his tax return, the appropriate form issued by the Internal Revenue Service for claiming deductions for employee business expenses (e.g., Form 2106, Employee Business Expenses, for 1985) and provide the information requested on that form, including the information required by paragraph (d) (2) and (3) of this section if the employee's business expenses are with respect to the use of listed property. In addition, the employee must maintain such records and supporting evidence as will substantiate each element of an expenditure or use (described in paragraph (b) of this section) in accordance with paragraph (c) of this section.

(4) Definition of an "adequate accounting" to the employer. For purposes of this paragraph an adequate



(5) Substantiation of expenditures by certain employees. An employee who makes an adequate accounting to his employer within the meaning of this paragraph will not again be required to substantiate such expense account information except in the following cases:

(i) An employee whose business expenses exceed the total of amounts charged to his employer and amounts received through advances, reimbursements or otherwise and who claims a deduction on his return for such excess,

(ii) An employee who is related to his employer within the meaning of section 267 (b), but for this purpose the percentage referred to in section 267 (b) (2) shall be 10 percent, and

(iii) Employees in cases where it is determined that the accounting procedures used by the employer for the reporting and substantiation of expenses by such employees are not adequate, or where it cannot be determined that such procedures are adequate. The district director will determine whether the employer's accounting procedures are adequate by considering the facts and circumstances of each case, including the use of proper internal controls. For example, an employer should require that an expense account be verified and approved by a reasonable person other than the person

incurring such expenses. Accounting procedures will be considered inadequate to the extent that the employer does not require an adequate accounting from his employees as defined in paragraph (f) (4) of this section, or does not maintain such substantiation. To the extent an employer fails to maintain adequate accounting procedures he will thereby obligate his employees to substantiate separately their expense account information.

(g) Substantiation by reimbursement arrangements or per diem, mileage, and other traveling allowances. The Commissioner may, in his discretion, prescribe rules under which--

(1) Reimbursement arrangements covering ordinary and necessary expenses of traveling away from home (exclusive of transportation expenses to and from destination),

(2) Per diem allowances providing for ordinary and necessary expenses of traveling away from home (exclusive of transportation costs to and from destination), and

(3) Mileage allowances providing for ordinary and necessary expenses of local travel and transportation while traveling away from home, will, if in accordance with reasonable business



customer") under a reimbursement or other expense allowance arrangement with such client or customer. For purposes of this paragraph, the term "business expenses" means ordinary and necessary expenses for travel, entertainment, gifts, or with respect to listed property which are deductible under section 162, and the regulations thereunder, to the extent not disallowed by sections 262 and 274 (c). Thus, the term "business expenses" does not include personal, living, or family expenses disallowed by section 262 or travel expenses disallowed by section 274 (c), and reimbursements for such expenditures must be reported as income by the independent contractor. For purposes of this paragraph, the term "reimbursements" means advances, allowances, or reimbursements received by an independent contractor for travel, entertainment, gifts, or with respect to listed property in connection with the performance by him of services for his client or customer, under a reimbursement or other expense allowance arrangement with his client or customer, and includes amounts charged directly or indirectly to the client or customer through credit card systems or otherwise. See paragraph (j) of this section relating to the substantiation of meal expenses while traveling away from home.

practice, be regarded as equivalent to substantiation by adequate records or other sufficient evidence for purposes of paragraph (c) of this section of the amount of such expenses and as satisfying, with respect to the amount of such expenses, the requirements of an adequate accounting to the employer for purposes of paragraph (f) (4) of this section. If the total allowance received exceeds the deductible expenses paid or incurred by the employee, such excess must be reported as income on the employee's return. A mileage allowance provided under paragraph (g) (3) of this section is available only to the owner of a vehicle. See paragraph (j) of this section relating to the substantiation of meal expenses while traveling away from home.

(h) Reporting and substantiation of certain reimbursements of persons other than employees--(1) In general. The purpose of this paragraph is to provide rules for the reporting and substantiation of certain expenses for travel, entertainment, gifts, or with respect to listed property paid or incurred by one person (hereinafter termed "independent contractor") in connection with services performed for another person other than an employer (hereinafter termed "client or



(2) Substantiation by independent contractors. An independent contractor shall substantiate, with respect to his reimbursements, each element of an expenditure (described in paragraph (b) of this section) in accordance with the requirements of paragraph (c) of this section; and, to the extent he does not so substantiate, he shall include such reimbursements in income. An independent contractor shall so substantiate a reimbursement for entertainment regardless of whether he accounts (within the meaning of paragraph (h) (3) of this section) for such entertainment.

(3) Accounting to a client or customer under section 274 (e) (4) (B). Section 274 (e) (4) (B) provides that section 274 (a) (relating to disallowance of expenses for entertainment) shall not apply to expenditures for entertainment for which an independent contractor has been reimbursed if the independent contractor accounts to his client or customer, to the extent provided by section 274 (d). For purposes of section 274 (e) (4) (B), an independent contractor shall be considered to account to his client or customer for an expense paid or incurred under a reimbursement or other expense allowance arrangement with his client or customer if, with respect to such expense for entertainment, he submits to his client or customer

adequate records or other sufficient evidence conforming to the requirements of paragraph (c) of this section.

(4) Substantiation by client or customer. A client or customer shall not be required to substantiate, in accordance with the requirements of paragraph (c) of this section, reimbursements to an independent contractor for travel and gifts, or for entertainment unless the independent contractor has accounted to him (within the meaning of section 274 (e) (4) (B) and paragraph (h) (3) of this section) for such entertainment. If an independent contractor has so accounted to a client or customer for entertainment, the client or customer shall substantiate each element of the expenditure (as described in paragraph (b) of this section) in accordance with the requirements of paragraph (c) of this section.

(i) [Reserved].

(j) Authority for an optional method of computing meal expenses while traveling away from home. The Commissioner may establish a method under which a taxpayer may elect to use a specified amount or amounts for meals while traveling away from home in lieu of substantiating the actual cost of meals. The taxpayer would not be relieved of substantiating the actual cost of other travel expenses as well as the time, place, and



(D) Bucket trucks ("cherry pickers"),

(E) Cement mixers,

(F) Combines,

(G) Cranes and derricks,

(H) Delivery trucks with seating only for the driver, or only for the driver plus a folding jump seat,

(I) Dump trucks (including garbage trucks),

(J) Flatbed trucks,

(K) Forklifts,

(L) Passenger buses used as such with a capacity of at least 20 passengers,

(M) Qualified moving vans (as defined in paragraph (k) (4) of this section),

(N) Qualified specialized utility repair trucks (as defined in paragraph (k) (5) of this section),

(O) Refrigerated trucks,

(P) School buses (as defined in section 4221 (d) (7) (C)),

(Q) Tractors and other special purpose farm vehicles,

(R) Unmarked vehicles used by law enforcement officers (as defined in paragraph (k) (6) of this section) if the use is officially authorized, and

business purpose of the travel. See paragraphs (b) (2) and (c) of this section.

(k) Exceptions for qualified nonpersonal use vehicles--(1) In general. The substantiation

requirements of section 274 (d) and this section do not apply to any qualified nonpersonal use vehicle (as defined in paragraph (k) (2) of this section).

(2) Qualified nonpersonal use vehicles--(i) In general. For purposes of section 274 (d) and this section, the term "qualified nonpersonal use vehicle" means any vehicle which, by reason of its nature (i.e., design), is not likely to be used more than a de minimis amount for personal purposes.

(ii) List of vehicles. Vehicles which are qualified nonpersonal use vehicles include the following--

(A) Clearly marked police and fire vehicles (as defined and to the extent provided in paragraph (k) (3) of this section),

(B) Ambulances used as such or hearses used as such,

(C) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds,



(S) Such other vehicles as the Commissioner may designate.

(3) Clearly marked police or fire vehicles. A police or fire vehicle is a vehicle, owned or leased by a governmental unit, or any agency or instrumentality thereof, that is required to be used for commuting by a police officer or fire fighter who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the police officer's arrest powers or the fire fighter's obligation to respond to an emergency is prohibited by such governmental unit. A police or fire vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police or fire vehicle. A marking on a license plate is not a clear marking for purposes of this paragraph (k).

(4) Qualified moving van. The term "qualified moving van" means any truck or van used by a professional moving company in the trade or business of moving household or business goods if--

(i) No personal use of the van is allowed other than for travel to and from a move site (or for de minimis personal use, such as a stop for lunch on the way between two move sites),

(ii) Personal use for travel to and from a move site is an irregular practice (i.e., not more than five times a month on average), and

(iii) Personal use is limited to situations in which it is more convenient to the employer, because of the location of the employee's residence in relation to the location of the move site, for the van not to be returned to the employer's business location.

(5) Qualified specialized utility repair truck. The term "qualified specialized utility repair truck" means any truck (not including a van or pickup truck) specifically designed and used to carry heavy tools, testing equipment, or parts if--

(i) The shelves, racks, or other permanent interior construction which has been installed to carry and store such heavy items is such that it is unlikely that the truck will be used more than a de minimis amount for personal purposes, and

(ii) The employer requires the employee to drive the truck home in order to be able to respond in emergency situations for purposes of restoring or maintaining electricity, gas, telephone, water, sewer, or steam utility services.

(6) Unmarked law enforcement vehicles--(i) In general. The substantiation requirements of section 274 (d) and this section do not apply to officially



this paragraph (k) (6) (ii), but does not include Internal Revenue Service special agents.

(7) Trucks and vans. The substantiation requirements of section 274 (d) and this section apply generally to any pickup truck or van, unless the truck or van has been specially modified with the result that it is not likely to be used more than a de minimis amount for personal purposes. For example, a van that has only a front bench for seating, in which permanent shelving that fills most of the cargo area has been installed, that constantly carries merchandise or equipment, and that has been specially painted with advertising or the company's name, is a vehicle not likely to be used more than a de minimis amount for personal purposes.

(8) Examples. The following examples illustrate the provisions of paragraph (k) (3) and (6) of this section:

Example (1). Detective C, who is a "law enforcement officer" employed by a state police department, headquartered in city M, is provided with an unmarked vehicle (equipped with radio communication) for use during off-duty hours because C must be able to communicate with headquarters and be available for duty at any time (for example, to report to a surveillance or crime site). The police department generally has officially authorized personal use of the vehicle by C but has prohibited use of the vehicle for recreational purposes or for personal purposes outside the state. Thus, C's use of the vehicle for commuting between

authorized uses of an unmarked vehicle by a "law enforcement officer". To qualify for this exception, any personal use must be authorized by the Federal, State, county, or local governmental agency or department that owns or leases the vehicle and employs the officer, and must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use.

(ii) Law enforcement officer. The term "law enforcement officer" means an individual who is employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for such crimes), who is authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen's arrest), and who regularly carries firearms (except when it is not possible to do so because of the requirements of undercover work). The term "law enforcement officer" may include an arson investigator if the investigator otherwise meets the requirements of



(m) Effective date. Section 274 (d), as amended by the Tax Reform Act of 1984 and Public Law 99-44, and this section (except as provided in paragraph (d) (2) and (3) of this section) apply with respect to taxable years beginning after December 31, 1985. Section 274 (d) and this section apply to any deduction or credit claimed in a taxable year beginning after December 31, 1985, with respect to any listed property, regardless of the taxable year in which the property was placed in service. However, except as provided in § 1.132-1T Q/A-4b with respect to qualified nonpersonal use vehicles, the substantiation requirements of section 274 (d) and this section do not apply to the determination of an employee's working condition fringe exclusion or to the determination under § 1.162-25T (b) of an employee's deduction before the date that those requirements apply, under this paragraph (m), to the employer, if the employer is taxable.

headquarters or a surveillance site and home and for personal errands is authorized personal use as described in paragraph (k) (6) (i) of this section. With respect to these authorized uses, the vehicle is not subject to the substantiation requirements of section 274 (d) and the value of these uses is not included in C's gross income.

Example (2). Detective T is a "law enforcement officer" employed by city M. T is authorized to make arrests only within M's city limits. T, along with all other officers on the force, is ordinarily on duty for eight hours each work day and on call during the other sixteen hours. T is provided with the use of a clearly marked police vehicle in which T is required to commute to his home in city M. The police department's official policy regarding marked police vehicles prohibits personal use (other than commuting) of the vehicles outside the city limits. When not using the vehicle on the job, T uses the vehicle only for commuting, personal errands on the way between work and home, and personal errands within city M. All use of the vehicle by T conforms to the requirements of paragraph (k) (3) of this section. Therefore, the value of that use is excluded from T's gross income as a working condition fringe and the vehicle is not subject to the substantiation requirements of section 274 (d).

(j) Definitions. For purposes of section 274 (d) and this section, the terms "automobile" and "vehicle" have the same meanings as prescribed in § 1.61-2T Q/A-11 and § 1.61-2T Q/A-20, respectively. Also, for purposes of section 274 (d) and this section, the terms "employer," "employee," and "personal use" have the same meanings as prescribed in § 1.274-6T (e).



Par. 7. New § 1.274-6T is added immediately after § 1.274-5T and reads as follows:

**§ 1.274-6T Substantiation with respect to certain types of listed property for taxable years beginning after 1985 (temporary).**

(a) *Written policy statements as to vehicles*—(1) *In general.* Two types of written policy statements satisfying the conditions described in paragraph (a)(2) and (3) of this section, if initiated and kept by an employer to implement a policy of no personal use, or no personal use except for commuting, of a vehicle provided by the employer, qualify as sufficient evidence corroborating the taxpayer's own statement and therefore will satisfy the employer's substantiation requirements under section 274(d). Therefore, the employee need not keep a separate set of records for purposes of the employer's substantiation requirements under section 274(d) with respect to use of a vehicle satisfying these written policy statement rules. A written policy statement adopted by a governmental unit as to employee use of its vehicles is eligible for these exceptions to the section 274(d) substantiation rules. Thus, a resolution of a city council or a provision of state law or a state constitution would qualify as a written policy statement, as long as the conditions described in paragraph (a)(2) and (3) of this section are met.

(2) *Vehicles not used for personal purposes*—(i) *Employers.* A policy statement that prohibits personal use by an employee satisfies an employer's substantiation requirements under section 274(d) if all the following conditions are met—

(A) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business.

(B) When the vehicle is not used in the employer's trade or business, it is kept on the employer's business premises, unless it is temporarily located elsewhere, for example, for maintenance or because of a mechanical failure.

(C) No employee using the vehicle lives at the employer's business premises.

(D) Under a written policy of the employer, neither an employee, nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, except for de minimis personal use (such as a stop for lunch between two business deliveries), and

(E) The employer reasonably believes that, except for de minimis use, neither the employee, nor any individual whose use would be taxable to the employee,

uses the vehicle for any personal purpose.

There must also be evidence that would enable the Commissioner to determine whether the use of the vehicle meets the preceding five conditions.

(ii) *Employees.* An employee, in lieu of substantiating the business/investment use of an employer-provided vehicle under § 1.274-5T, may treat all use of the vehicle as business/investment use if the following conditions are met—

(A) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business.

(B) When the vehicle is not used in the employer's trade or business, it is kept on the employer's business premises, unless it is temporarily located elsewhere, for example, for maintenance or because of a mechanical failure.

(C) No employee using the vehicle lives at the employer's business premises.

(D) Under a written policy of the employer, neither the employee, nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, except for de minimis personal use (such as a stop for lunch between two business deliveries), and

(E) Except for de minimis personal use, neither the employee, nor any individual whose use would be taxable to the employee, uses the vehicle for any personal purpose.

There must also be evidence that would enable the Commissioner to determine whether the use of the vehicle meets the preceding five conditions.

(3) *Vehicles not used for personal purposes other than commuting*—(i) *Employers.* A policy statement that prohibits personal use by an employee, other than commuting, satisfies an employer's substantiation requirements under section 274(d) if all the following conditions are met—

(A) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business.

(B) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle.

(C) The employer has established a written policy under which neither the employee, nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a

business delivery and the employee's home).

(D) The employer reasonably believes that, except for de minimis personal use, neither the employee, nor any individual whose use would be taxable to the employee, uses the vehicle for any personal purpose other than commuting.

(E) The employee required to use the vehicle for commuting is not a control employee (as defined in § 1.61-2T Q/A-20b) required to use an automobile (as defined in § 1.61-2T Q/A-11), and

(F) The employer accounts for the commuting use by including in the employee's gross income the commuting value provided in § 1.61-2T Q/A-21 (to the extent not reimbursed by the employee).

There must be evidence that would enable the Commissioner to determine whether the use of the vehicle met the preceding six conditions.

(ii) *Employees.* An employee, in lieu of substantiating the business/investment use of an employer-provided vehicle under § 1.274-5T, may substantiate any exclusion allowed under section 132 for a working condition fringe by including in income the commuting value of the vehicle (determined by the employer pursuant to § 1.61-2T Q/A-21) if all the following conditions are met:

(A) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business.

(B) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle.

(C) Under a written policy of the employer, neither the employee, nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home).

(D) Except for de minimis personal use, neither the employee, nor any individual whose use would be taxable to the employee, uses the vehicle for any personal purpose other than commuting.

(E) The employee required to use the vehicle for commuting is not a control employee (as defined in § 1.61-2T Q/A-20b) required to use an automobile (as defined in § 1.61-2T Q/A-11), and

(F) The employee includes in gross income the commuting value determined by the employer as provided in § 1.61-2T Q/A-21 (to the extent that the employee does not reimburse the employer for the commuting use).



There must also be evidence that would enable the Commissioner to determine whether the use of the vehicle met the preceding six conditions.

(b) *Vehicles used in connection with the business of farming*—(1) *In general.* If, during a taxable year or shorter period, a vehicle, not otherwise described in section 274(i), § 1.274-5T(k), or paragraph (a) (2) or (3) of this section, is owned or leased by an employer and used during most of a normal business day directly in connection with the business of farming (as defined in paragraph (b)(2) of this section), the employer, in lieu of substantiating the use of the vehicle as prescribed in § 1.274-5T(b)(6)(i)(B), may determine any deduction or credit with respect to the vehicle as if the business/investment use (as defined in § 1.280F-6T(d)(3)(i)) and the qualified business use (as defined in § 1.280F-6T(d)(2)) of the vehicle in the business of farming for the taxable year or shorter period were 75 percent plus that percentage, if any, attributable to an amount included in an employee's gross income. If the vehicle is also available for personal use by employees, the employer must include the value of that personal use in the gross income of the employees, allocated among them in the manner prescribed in § 1.132-1T Q/A-4a(f).

(2) *Directly in connection with the business of farming.* The phrase "directly in connection with the business of farming" means that the vehicle must be used directly in connection with the business of operating a farm (i.e., cultivating land or raising or harvesting any agricultural or horticultural commodity, or the raising, shearing, feeding, caring for, training, and management of animals) or incidental thereto (for example, trips to the feed and supply store).

(3) *Substantiation by employees.* If an employee is provided with the use of a vehicle to which this paragraph (b) applies, the employee may, in lieu of substantiating the business/investment use of the vehicle in the manner prescribed in § 1.274-5T, substantiate any exclusion allowed under section 132 for a working condition fringe as if the business/investment use of the vehicle were 75 percent, plus that percentage, if any, determined by the employer to be attributable to the use of the vehicle by individuals other than the employee, provided that the employee includes in gross income the amount determined by the employer as includible in the employee's gross income. See § 1.132-1T Q/A-4a(f) for examples illustrating the allocation of use of a vehicle among employees.

(c) *Vehicles treated as used entirely for personal purposes.* An employer may satisfy the substantiation requirements under section 274(d) for a taxable year or shorter period with respect to the business use of a vehicle that is provided to an employee by including the value of the availability of the vehicle during the relevant period in the employee's gross income without any exclusion for a working condition fringe with respect to the vehicle and, if required, by withholding any taxes. Under these circumstances, the employer's business/investment use of the vehicle during the relevant period is 100 percent. The employer's qualified business use of the vehicle is dependent upon the relationship of the employee to the employer (see § 1.280F-6T(d)(2)).

(d) *Limitation.* If a taxpayer chooses to satisfy the substantiation requirements of section 274(d) and § 1.274-5T by using one of the methods prescribed in paragraphs (a) (2) or (3), (b), or (c) of this section and files a return with the Internal Revenue Service for a taxable year consistent with such choice, the taxpayer may not later use another of these methods. Similarly, if a taxpayer chooses to satisfy the substantiation requirements of section 274(d) in the manner prescribed in § 1.274-5T and files a return with the Internal Revenue Service for a taxable year consistent with such choice, the taxpayer may not later use a method prescribed in paragraph (a) (2) or (3), (b), or (c) of this section. This rule applies to an employee for purposes of substantiating any working condition fringe exclusion as well as to an employer. For example, if an employee excludes on his federal income tax return for a taxable year 90 percent of the value of the availability of an employer-provided automobile on the basis of records that allegedly satisfy the "adequate records" requirement of § 1.274-5T(c)(2), and that requirement is not satisfied, then the employee may not satisfy the substantiation requirements of section 274(d) for the taxable year by any method prescribed in this section, but may present other corroborative evidence as prescribed in § 1.274-5T(c)(3).

(e) *Definitions*—(1) *In general.* The definitions provided in this paragraph (e) apply for purposes of section 274(d), § 1.274-5T, and this section.

(2) *Employer and employee.* The terms "employer" and "employee" include the following:

- (i) A sole proprietor shall be treated as both an employer and employee.
- (ii) A partnership shall be treated as an employer of its partners, and

(iii) A partner shall be treated as an employee of the partnership.

(3) *Automobile.* The term "automobile" has the same meaning as prescribed in § 1.61-2T Q/A-11.

(4) *Vehicle.* The term "vehicle" has the same meaning as prescribed in § 1.61-2T Q/A-20.

(5) *Personal use.* "Personal use" by an employee of an employer-provided vehicle includes use in any trade or business other than the trade or business of being the employee of the employer providing the vehicle.

(f) *Effective date.* This section is effective for taxable years beginning after December 31, 1985.

**Par. 8.** Section 1.280F-1T is amended by adding a new paragraph (c)(3) to read as follows:

**§ 1.280F-1T** Limitations on investment tax credit and recovery deductions under section 168 for passenger automobiles and certain other listed property; overview of regulations (temporary).

(c) *Effective dates*—\* \* \*

(3) *Leased passenger automobiles.*

Section 1.280F-5T(e) generally applies to passenger automobiles leased after April 2, 1985, in taxable years ending after that date. Section 1.280F-5T(e) does not apply to any passenger automobile that is leased pursuant to a binding contract, which is entered into no later than April 2, 1985, and which is in effect at all times thereafter, but only if the automobile is used under the lease before August 1, 1985. If § 1.280F-5T(e) does not apply to a passenger automobile, see paragraph (c) (1) and (2) of this section.

**§ 1.280F-3T [Amended]**

**Par. 9.** Section 1.280F-3T is amended by revising the first sentence of paragraph (d)(3) to read as follows: "A taxpayer must be able to substantiate the use of any listed property, as prescribed in section 274(d)(4) and § 1.274-5T or § 1.274-6T, for any taxable year for which recapture under section 280F(b)(3) and paragraph (d) (1) and (2) of this section may occur even if the taxpayer has fully depreciated (or expensed) the listed property in a prior year."

**Par. 10.** Section 1.280F-5T is amended as follows:

1. The caption of paragraph (d) and the first sentence of paragraph (d)(1) are revised to read as set forth below.

2. The first sentence of paragraph (d)(2)(i) is amended by adding after the words "passenger automobile" the clause ", which is leased after June 18, 1984, and before April 3, 1985."



3. Paragraph (d)(2)(ii) is amended by removing the words "paragraph (g)(2)" and "paragraph (g)(3)" wherever they appear and by adding in their places the words "paragraph (h)(2)" and "paragraph (h)(3)", respectively. Paragraph (d)(2)(ii) is further amended by removing the words "paragraph (d)(3)(iii)" and "paragraph (d)(3)(iv)" and by adding in their places the words "paragraph (d)(2)(iii)" and "paragraph (d)(2)(iv)", respectively.

4. Paragraphs (e), (f), (g), and (h) are redesignated as paragraphs (f), (g), (h), and (i).

5. A new paragraph (e) is added immediately after paragraph (d) and reads as set forth below.

6. Paragraph (f) as redesignated is amended by removing from paragraph (f)(2)(i) the words "paragraph (g)(2)" and by adding in their place the words "paragraph (h)(2)", by removing from paragraph (f)(2)(ii) the words "paragraph (g)(3)" and by adding in their place the words "paragraph (h)(3)", and by removing from paragraph (f)(2)(iii) the words "paragraph (e)(3)" and by adding in their place the words "paragraph (f)(3)".

7. The introductory text of paragraph (g) as redesignated is revised to read as set forth below.

8. Paragraph (g)(2) as redesignated is amended by removing the words "paragraph (f)(2)" and by adding in their place the words "paragraph (g)(2)".

9. The last sentence of paragraph (h)(3) as redesignated is amended by removing the words "paragraph (f)(1)" and by adding in their place the words "paragraph (g)(1)".

10. Example (3) of paragraph (i) as redesignated is amended by removing from the fourth sentence the words "paragraphs (e)(1) and (f)(1)", "paragraph (f)(3)", and "paragraph (e)(3)(ii)", and by adding in their places the words "paragraphs (f)(1) and (g)(1)", "paragraph (g)(3)", and "paragraph (f)(3)(iii)", respectively.

11. Example (4) of paragraph (i) as redesignated is amended by removing from the third sentence the words "paragraphs (e)(1) and (f)(1) and (2)", "paragraph (f)(3)", and "paragraph (e)(3)(i)", and by adding in their places the words "paragraphs (f)(1) and (g)(1) and (2)", "paragraph (g)(3)", and "paragraph (f)(3)(i)", respectively.

12. Paragraph (i) as redesignated is further amended by adding after example (4) two new examples to read as set forth below.

13. The new and revised provisions read as follows:

§ 1.280F-5T Leased property (temporary).

(d) *Inclusions in income of lessees of passenger automobiles leased after June 18, 1984, and before April 3, 1985—(1) In general.* If a taxpayer leases a passenger automobile after June 18, 1984, but before April 3, 1985, for each taxable year during which the taxpayer leases the automobile, the taxpayer must include in gross income an inclusion amount (prorated for the number of days of the lease term included in that taxable year), determined under this paragraph (d)(1), and multiplied by the business/investment use (as defined in § 1.280F-6T(d)(3)(i)) for the particular taxable year. \* \* \*

(e) *Inclusions in income of lessees of passenger automobiles leased after April 2, 1985—(1) In general.* For any passenger automobile that is leased after April 2, 1985, the inclusion amount for each taxable year during which an automobile is leased is based on the rules set forth in this paragraph (e). Additional inclusion amounts when a passenger automobile is not used predominantly in a qualified business use during a taxable year are determined under paragraph (e)(6) of this section. See paragraph (h)(2) of this section for the definition of fair market value.

(2) *Fair market value not greater than \$50,000: years one through three.* For any passenger automobile that has a fair market value not greater than \$50,000, the inclusion amount for each of the first three taxable years during which the automobile is leased is determined as follows:

(i) For the appropriate range of fair market values in the table in paragraph (e)(2)(iv) of this section, select the dollar amount from the column for the quarter of the taxable year in which the automobile is first used under the lease.

(ii) Prorate the dollar amount for the number of days of the lease term included in the taxable year, and

(iii) Multiply the prorated dollar amount by the business/investment use for the taxable year.

(iv) *Dollar amounts: Years 1-3:*

DOLLAR AMOUNTS: YEARS 1-3

Fair market value		Taxable year quarter			
Greater than—	But not greater than—	4th	3d	2d	1st
\$11,250	\$11,500	\$8	\$7	\$6	\$6
11,500	11,750	24	21	19	17
11,750	12,000	40	35	32	29
12,000	12,250	56	49	44	40
12,250	12,500	72	64	57	52
12,500	12,750	88	78	70	63
12,750	13,000	104	92	83	75
13,000	13,250	120	106	95	86
13,250	13,500	144	128	115	104
13,500	13,750	172	153	137	124
13,750	14,000	200	177	159	145
14,000	14,250	228	202	182	165

DOLLAR AMOUNTS: YEARS 1-3—Continued

Fair market value		Taxable year quarter			
Greater than—	But not greater than—	4th	3d	2d	1st
14,250	14,500	256	227	204	185
14,500	14,750	284	252	226	206
14,750	15,000	312	277	249	226
15,000	15,250	340	302	271	246
15,250	15,500	369	327	293	266
15,500	15,750	397	352	316	287
15,750	16,000	425	377	338	307
16,000	16,250	453	402	360	327
16,250	16,500	481	426	383	348
16,500	16,750	509	451	405	368
16,750	17,000	537	476	428	388
17,000	17,500	579	514	461	419
17,500	18,000	635	563	506	459
18,000	18,500	691	613	550	500
18,500	19,000	748	663	595	541
19,000	19,500	804	713	640	581
19,500	20,000	860	763	685	622
20,000	20,500	916	812	729	662
20,500	21,000	972	862	774	703
21,000	21,500	1,028	912	819	744
21,500	22,000	1,084	962	863	784
22,000	23,000	1,169	1,036	930	845
23,000	24,000	1,281	1,136	1,020	926
24,000	25,000	1,393	1,236	1,109	1,007
25,000	26,000	1,506	1,335	1,199	1,089
26,000	27,000	1,618	1,435	1,288	1,170
27,000	28,000	1,730	1,534	1,377	1,251
28,000	29,000	1,842	1,634	1,467	1,332
29,000	30,000	1,955	1,734	1,556	1,413
30,000	31,000	2,067	1,833	1,646	1,495
31,000	32,000	2,179	1,933	1,735	1,576
32,000	33,000	2,292	2,032	1,824	1,657
33,000	34,000	2,404	2,132	1,914	1,738
34,000	35,000	2,516	2,232	2,003	1,819
35,000	36,000	2,629	2,331	2,093	1,901
36,000	37,000	2,741	2,431	2,182	1,982
37,000	38,000	2,853	2,530	2,271	2,063
38,000	39,000	2,965	2,630	2,361	2,144
39,000	40,000	3,078	2,730	2,450	2,225
40,000	41,000	3,190	2,829	2,540	2,307
41,000	42,000	3,302	2,929	2,629	2,388
42,000	43,000	3,415	3,028	2,718	2,469
43,000	44,000	3,527	3,128	2,806	2,550
44,000	45,000	3,639	3,228	2,897	2,631
45,000	46,000	3,752	3,327	2,987	2,713
46,000	47,000	3,864	3,427	3,076	2,794
47,000	48,000	3,976	3,526	3,165	2,875
48,000	49,000	4,088	3,626	3,255	2,956
49,000	50,000	4,201	3,726	3,344	3,037

(3) *Fair market value not greater than \$50,000: years four through six.* For any passenger automobile that has a fair market value greater than \$18,000, but not greater than \$50,000, the inclusion amount for the fourth, fifth, and sixth taxable years during which the automobile is leased is determined as follows:

(i) For the appropriate range of fair market values in the table in paragraph (e)(3)(iv) of this section, select the dollar amount from the column for the taxable year in which the automobile is used under the lease.

(ii) Prorate the dollar amount for the number of days of the lease term included in the taxable year, and

(iii) Multiply this dollar amount by the business/investment use for the taxable year.

(iv) *Dollar amounts: Years 4-6:*



DOLLAR AMOUNTS: YEARS 4-6

Fair market value		Year		
Greater than—	But not greater than—	4	5	6
\$18,000	\$18,500	\$15		
18,500	19,000	45		
19,000	19,500	75		
19,500	20,000	105		
20,000	20,500	135		
20,500	21,000	165		
21,000	21,500	195		
21,500	22,000	225		
22,000	22,500	270		
22,500	23,000	330	\$42	
23,000	24,000	390	102	
24,000	25,000	450	162	
25,000	26,000	510	222	
26,000	27,000	570	282	
27,000	28,000	630	342	\$54
28,000	29,000	690	402	114
29,000	30,000	750	462	174
30,000	31,000	810	522	234
31,000	32,000	870	582	294
32,000	33,000	930	642	354
33,000	34,000	990	702	414
34,000	35,000	1,050	762	474
35,000	36,000	1,110	822	534
36,000	37,000	1,170	882	594
37,000	38,000	1,230	942	654
38,000	39,000	1,290	1,002	714
39,000	40,000	1,350	1,062	774
40,000	41,000	1,410	1,122	834
41,000	42,000	1,470	1,182	894
42,000	43,000	1,530	1,242	954
43,000	44,000	1,590	1,302	1,014
44,000	45,000	1,650	1,362	1,074
45,000	46,000	1,710	1,422	1,134
46,000	47,000	1,770	1,482	1,194
47,000	48,000	1,830	1,542	1,254
48,000	49,000	11,890	1,602	1,314

(4) *Fair market value greater than \$50,000: years one through six.* (i) For any passenger automobile that has a fair market value greater than \$50,000, the inclusion amount for the first six taxable years during which the automobile is leased is determined as follows:

(A) Determine the dollar amount by using the appropriate formula in paragraph (e)(4)(ii) of this section.

(B) Prorate the dollar amount for the number of days of the lease term included in the taxable year, and

(C) Multiply this dollar amount by the business/investment use for the taxable year.

(ii) The dollar amount is computed as follows:

(A) If the automobile is first used under the lease in the fourth quarter of a taxable year, the dollar amount for each of the first three taxable years during which the automobile is leased is the sum of—

(1) \$124, and

(2) 11 percent of the excess of the automobile's fair market value over \$13,200.

(B) If the automobile is first used under the lease in the third quarter of a taxable year, the dollar amount for each of the first three taxable years during which the automobile is leased is the sum of—

(1) \$110, and

(2) 10 percent of the excess of the automobile's fair market value over \$13,200.

(C) If the automobile is first used under the lease in the second quarter of a taxable year, the dollar amount for each of the first three taxable years during which the automobile is leased is the sum of—

(1) \$100, and

(2) 9 percent of the excess of the automobile's fair market value over \$13,200.

(D) If the automobile is first used under the lease in the first quarter of a taxable year, the dollar amount for each of the first three taxable years during which the automobile is leased is the sum of—

(1) \$90, and

(2) 8 percent of the excess of the automobile's fair market value over \$13,200.

(E) For the fourth taxable year during which the automobile is leased, the dollar amount is 6 percent of the excess of the automobile's fair market value over \$18,000.

(F) For the fifth taxable year during which the automobile is leased, the dollar amount is 6 percent of the excess of the automobile's fair market value over \$22,800.

(G) For the sixth taxable year during which the automobile is leased, the dollar amount is 6 percent of the excess of the automobile's fair market value over \$27,600.

(5) *Seventh and subsequent taxable years.* (i) For any passenger automobile that has a fair market value less than or equal to \$32,400, the inclusion amount for the seventh and subsequent taxable years during which the automobile is leased is zero.

(ii) For any passenger automobile that has a fair market value greater than \$32,400, the inclusion amount for the seventh and subsequent taxable years during which the automobile is leased is 6 percent of—

(A) The excess (if any) of the automobile's fair market value, over

(B) The sum of—

(1) \$13,200 and

(2) \$4,800 multiplied by the number of taxable years in excess of three years.

(6) *Additional inclusion amount when less than predominant use in a qualified business use.* (i) If a passenger automobile, which is leased after April 2, 1985, is not predominantly used in a qualified business use during a taxable year, the lessee must add to gross income in the first taxable year that the automobile is not so used (and only in that year) an inclusion amount determined under this paragraph (e)(6). This inclusion amount is in addition to

the amount required to be included in gross income under paragraph (e) (2), (3), (4), and (5) of this section.

(ii) If the fair market value (as defined in paragraph (h)(2) of this section) of the automobile is greater than \$11,250, the inclusion amount is determined by multiplying the average of the business/investment use (as defined in paragraph (h)(3) of this section) by the appropriate dollar amount from the table in paragraph (e)(6)(iii) of this section. If the fair market value of the automobile is \$11,250 or less, the inclusion amount is the product of the fair market value of the automobile, the average business/investment use, and the applicable percentage from the table in paragraph (e)(6)(iv) of this section.

(iii) The dollar amount is determined under the following table:

If a passenger automobile is not predominantly used in a qualified business use during—	The dollar amount is:			
	Lease term (years)—			
	1	2	3	4 or more
The first taxable year of the lease term	\$350	\$700	\$1,150	\$1,500
The second taxable year of the lease term		150	700	1,200
The third taxable year of the lease term			250	750

(iv) The applicable percentage is determined under the following table:

If a passenger automobile is not predominantly used in a qualified business use during—	The applicable percentage:			
	Lease term (years)—			
	1	2	3	4 or more
The first taxable year of the lease term	3.0	6.0	10.2	13.2
The second taxable year of the lease term		1.25	6.2	10.4
The third taxable year of the lease term			2.25	6.5
The fourth taxable year of the lease term				1.7
The fifth taxable year of the lease term				0.5

(g) *Special rules applicable to inclusions in income of lessees.* This paragraph (g) applies to the inclusions in gross income of lessees prescribed under paragraphs (d)(2), (e)(6), or (f) of this section.

(i) *Examples.* . . .

*Example (5)* On July 15, 1985, A, a calendar year taxpayer, leases and places in service a passenger automobile with a fair market value of \$45,300. The lease is for a period of 5 years, during which A uses the automobile exclusively in a trade or business. Under paragraph (e) (2) and (3) of this section, for taxable years 1985 through 1990, A must include the following amounts in gross income:



Taxable year	Dollar amount	Proportion	Business use (percent)	Inclusion
1985	\$3,327	170/365	100	\$1,550
1986	3,327	365/365	100	3,327
1987	3,327	365/365	100	3,327
1988	1,650	365/365	100	1,650
1989	1,362	365/365	100	1,362
1990	1,074	196/365	100	577

**Example (6).** The facts are the same as in example (1), except that A uses the automobile only 45 percent in a trade or business during 1987 through 1990. Under § 1.280F-5T(e)(6), A must include in gross income for taxable year 1987, the first taxable year in which the automobile is not used predominantly in a trade or business, an additional amount based on the average business/investment use for taxable years 1985 through 1987. For taxable years 1985 through 1990, A must include the following amounts in gross income:

Taxable year	Dollar amount	Proportion	Business use (percent)	Inclusion
1985	\$3,327	170/365	100	\$1,550
1986	3,327	365/365	100	3,327
1987	3,327	365/365	45	1,497
	750		81.67	612
1988	1,650	365/365	45	743
1989	1,362	365/365	45	619
1990	1,074	196/365	45	260

**Par. 11.** Section 1.280F-6T is amended by revising paragraphs (b)(2)(ii) and (b)(3) to read as follows:

**§ 1.280F-6T Special rules and definitions (temporary).**

(b) \* \* \*

(2) \* \* \*

(ii) **Exception.** The term "listed property" does not include any vehicle that is a qualified nonpersonal use vehicle as defined in section 274(i) and § 1.274-5T(k).

(3) **Property used for entertainment, etc.—(i) In general.** Property of a type generally used for purposes of entertainment, recreation, or amusement includes property such as photographic, phonographic, communication, and video recording equipment.

(ii) **Exception.** The term "listed property" does not include any photographic, phonographic, communication, or video recording equipment of a taxpayer if the equipment is used either exclusively at the taxpayer's regular business establishment or in connection with the taxpayer's principal trade or business.

(iii) **Regular business establishment.** The regular business establishment of an employee is the regular business establishment of the employer of the employee. For purposes of this paragraph (b)(3), a portion of a dwelling

unit is treated as a regular business establishment if the requirements of section 280A(c)(1) are met with respect to that portion.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

**Par. 12.** The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 13.** Section 602.101(c) is amended by inserting in the appropriate places in the table:

"§ 1.61-2T Q/A-20..... 1545-0771",  
 "§ 1.274-5T..... 1545-0771", and  
 "§ 1.274-6T..... 1545-0771".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: October 29, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-28358 Filed 11-1-85; 8:47 am]

BILLING CODE 4830-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[A-5-FRL-2919-5]

**Approval and Promulgation of Implementation Plans; Illinois**

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Final rulemaking.

**SUMMARY:** In a June 25, 1985 Federal Register notice (50 CFR 26224), USEPA proposed to approve a revision to the Illinois State Implementation Plan (SIP) for Carbon Monoxide (CO). USEPA today is approving this revision. This final rulemaking incorporates a June 14, 1984, Opinion and Order of the Illinois Pollution Control Board (IPCB), PCB 84-19, into the SIP. This Order grants to Midwest Solvents Company (MSC) a variance from IPCB Rule 206(a) which governs CO emissions from the fluidized bed combustion (FBC) boiler for MSC's facility, which is located in Tazewell

County, Illinois. This action is taken in response to a January 16, 1985, request from the State of Illinois.

**EFFECTIVE DATE:** This final rulemaking becomes effective on December 6, 1985.

**ADDRESSES:** Copies of this revision to the Illinois SIP are available for inspection at:

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

Public Information Reference Unit, EPA, 401 M Street, SW., Washington, DC 20460.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: It is recommended that you telephone Uylaine E. McMahan at (312) 353-0396, Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Uylaine E. McMahan, (312) 353-0396.

**SUPPLEMENTARY INFORMATION:** On January 16, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a variance from Illinois Rule 206(a) for a FBC boiler at MSC's facility in Tazewell County, Illinois, as a proposed revision to its CO SIP. Tazewell County is an area that is classified as attainment with respect to the National Ambient Air Quality Standard (NAAQS) for CO.

During the 30 day public comment period USEPA received no comments regarding the June 25, 1985, notice of proposed rulemaking proposing to approve MSC's variance request for its FBC boiler.

The final variance will allow CO emissions from the new FBC boiler of up to 700 parts per million (ppm), (based on wet flue gas and adjusted to 50 percent excess air) until June 14, 1987. Because the FBC boiler is a major new source in an attainment area, it must meet the best available control technology (BACT) requirement of the Prevention of Significant Deterioration (PSD) regulations. The PSD program in Illinois was delegated to the IEPA on April 7, 1980. It is the IEPA's responsibility to make a BACT determination for this facility. In addition, a new source is required to meet the Illinois SIP limit for new sources of CO. In today's final rulemaking, USEPA's finding is limited to determining that the CO NAAQS will not be violated by this variance. In this notice, USEPA makes no findings regarding the State's BACT determination.

The IPCB granted MSC a variance from the Rule 206(a) which allows a



temporary CO limit of 700 ppm. MSC's new FBC boiler, is subject to the following operating conditions:

1. This variance will expire on June 14, 1987.

2. MSC has committed itself to develop and implement a program to study and evaluate any technical advances in the control of CO in FBC boilers.

3. MSC has committed itself to develop a program to evaluate the operating characteristics of its FBC boiler. This program shall include the periodic testing of the FBC boiler for CO emissions so that the operation of the boiler can be optimized to minimize the emissions of CO while maintaining the design efficiency.

4. MSC has committed itself to submit to IEPA every 6 months a written report describing the progress of the aforementioned program, as set forth in item numbers 2 and 3.

MSC asserts that no available control technology could reduce the CO emissions to the SIP level without greatly decreasing combustion efficiency, and increasing NO<sub>2</sub> emissions. The air quality analysis section of MSC's preconstruction permit application shows that the predicted CO impacts are well below the maximum 1-hour and 8-hour secondary NAAQS. In reaching today's findings, USEPA utilized only the State's air quality analysis that was completed as part of the PSD requirements. The details of this analysis are contained in the January 16, 1985, State submittal. This analysis, which relies on USEPA's Multiple Point Terrain (MPTER) reference model, predicted a maximum 1-hour CO impact of 50.62 µg/m<sup>3</sup>. The 1-hour standard for CO is 40,000 µg/m<sup>3</sup>, and the 8-hour standard for CO is 10,000 µg/m<sup>3</sup>.

Consequently, it can be concluded that the MSC's new FBC boiler will not have a significant impact on CO air quality in Tazewell County and, therefore, will not interfere with attainment and maintenance of the CO NAAQS. USEPA, is today approving IPCB 84-19 as a revision to the Illinois SIP. However, USEPA is not affirming the 700 ppm emission limit for CO as BACT for FBC boilers.

MSC must comply with all the PSD requirements including BACT for CO. The approval of this SIP revision does not in any way eliminate the requirements for MSC to comply with the PSD regulations or any other applicable new source regulation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Incorporation by Reference, Lead, Particulate matter, Carbon monoxide.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 30, 1985.

Lee M. Thomas,  
Administrator.

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

##### Illinois

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.720 is revised by adding new paragraph (c)(62) as follows:

##### § 52.720 Identification of Plan.

\* \* \*

(c) \* \* \*

(62) On January 16, 1985, the Illinois Environmental Protection Agency submitted a variance from Illinois Rule 206(a).

(i) Incorporation by reference.

(A) June 14, 1984, Opinion and Order of the Illinois Pollution Control Board (IPCB), PCB 84-19. This is a variance from Illinois Rule 206(a) until June 14, 1987, for CO emissions from a fluidized bed combustion boiler at Midwest Solvents Company's facility in Tazewell County, Illinois.

\* \* \*

[FR Doc. 85-26453 Filed 11-5-85; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Parts 60 and 61

[A-4-FRL-2919-4]

#### Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Florida

**AGENCY:** Environmental Protection Agency.

**ACTION:** Delegation of authority.

**SUMMARY:** On August 9, 1985, the State of Florida requested that EPA delegate authority for implementation and enforcement of several additional categories of the Standards of Performance for New Stationary Sources (NSPS), and the National Emission Standards for Hazardous Air Pollutants (NESHAP). Since EPA's review of pertinent State laws and rules and regulations showed them to be adequate for the implementation and enforcement of these Federal standards, the Agency has made the delegation as requested.

**EFFECTIVE DATE:** The effective date of the delegation of authority is September 24, 1985.

**ADDRESSES:** Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards (listed below) should be submitted to the following address: Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

**FOR FURTHER INFORMATION CONTACT:** Archie Lee, at the EPA Region IV address listed above, and phone 404/881-3286 or FTS 257-3286.

**SUPPLEMENTARY INFORMATION:** Section 301, in conjunction with sections 101, and 111(c)(1) of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS, and in 40 CFR Part 61, NESHAP.

On June 10, 1982, EPA initially delegated the authority for implementation and enforcement of the NSPS and NESHAP program to the State of Florida. On August 9, 1985, Florida requested a delegation of authority for implementation and enforcement of the following NSPS categories:

1. Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 7, 1983; 40 CFR Part 60, Subpart AAa, as promulgated 10/31/84.

2. Glass Manufacturing Plants; 40 CFR Part 60, Subpart CC, as promulgated 10/19/84.

3. Metallic Mineral Processing Plants; 40 CFR Part 60, Subpart LL, as promulgated 02/21/84.

4. Beverage Can Surface Coating Industry; 40 CFR Part 60, Subpart WW, as promulgated 08/25/83.



5. Flexible Vinyl and Urethane Coating and Printing; 40 CFR Part 60, Subpart FFF, as promulgated 06/29/84.

6. Equipment Leaks of VOC in Petroleum Refineries; 40 CFR Part 60, Subpart GGG, as promulgated 05/30/84.

7. Synthetic Fiber Production Facilities; 40 CFR Part 60, Subpart HHH, as promulgated 04/05/84.

8. Petroleum Dry Cleaners; 40 CFR Part 60, Subpart JJJ, as promulgated 09/21/84.

9. Wool Fiberglass Insulation Manufacturing; 40 CFR Part 60, Subpart PPP, as promulgated 02/25/85.

On August 9, 1985, Florida also requested a delegation of authority for implementation and enforcement of the following NESHAP categories:

1. Equipment Leaks (Fugitive Emission Sources) of Benzene; 40 CFR Part 61, Subpart J, as promulgated 06/06/84.

2. Equipment Leaks (Fugitive Emission Sources); 40 CFR Part 61, Subpart V, as promulgated 10/31/84.

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of June 10, 1982. Florida sources subject to the requirements of the above categories of NSPS and NESHAP will now be under the jurisdiction of the State of Florida.

Dated: October 17, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85-26455 Filed 11-5-85; 8:45 am]

BILLING CODE 5560-50-M

#### 40 CFR Part 180

[PP 5F3241/R798; FRL-2919-7]

#### Pesticide Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

**SUMMARY:** This rule amends the regulation in 40 CFR 180.399 by increasing the tolerance levels for the combined residues of the fungicide iprodione and its metabolite in or on the raw agricultural commodities almonds hulls and almonds nutmeats. This regulation, to permit the maximum levels of residues in or on the commodities, was requested in a petition by Rhone-Poulenc, Inc.

**EFFECTIVE DATE:** Effective on November 6, 1985.

**ADDRESS:** Written objections, identified by the document control number (PP

5F5341/R798), may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M-3708, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of May 29, 1985 (50 FR 21935), which announced that Rhone-Poulenc, Inc., P.O. Box 125, Monmouth Junction, NJ 08852, had submitted pesticide petition 5F3241 to the EPA. This petition requested that the Administrator, pursuant to section 409(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], in or on almond hulls at 2.0 parts per million (ppm).

Rhone-Poulenc subsequently amended the petition by proposing a tolerance for residues of iprodione as expressed in pesticide petition 5F3241 in or on almonds nutmeat at 0.3 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the tolerances include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 500 ppm (25 mg/kg body weight/day), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg body weight/day), and systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg body weight/day).

2. A rabbit teratology study in which the following doses were administered by gavage, 0, 100, 200 and 400 mg/kg body weight, resulting in a teratogenic NOEL equal to or greater than 400 mg/kg body weight (considered unacceptable under current guidelines).

3. A rat teratology study in which the following doses were administered by gavage, 0, 100, 200, 400 mg/kg body weight, resulting in teratogenic NOEL greater than 400 mg/kg body weight.

4. A 24-month rat feeding/

oncogenicity study using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study at the highest dose tested.

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, 178.6 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study at the highest dose tested.

6. A 1-year dog feeding study using dosage levels of 100, 600, and 3,600 ppm (2.5, 15, and 90 mg/kg bw/day) with a NOEL of 100 ppm (2.5 mg/kg bw/day) and a LEL of 600 ppm (15 mg/kg bw/day).

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg body weight/day) with a NOEL of 2,400 ppm (60 mg/kg body weight/day) and a LEL of 7,200 ppm (180 mg/kg body weight/day).

Data currently lacking include a second teratology study using gastric intubation, an acute dermal study, and mutagenicity studies including: (1) DNA repair, (2) gene mutation, mammalian, preferably in vitro, and (3) chromosomal aberration, mammalian, preferably in vitro.

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 25 mg/kg/day) and using a 100 fold safety factor, is calculated to be 0.2500 mg/kg of bw/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 15.00 mg/day. The theoretical maximum residue contribution (TMRC) from the tolerances is .0001 mg/day and utilizes a negligible percentage of the MPI. These tolerances and the published tolerances utilize a total of 12.49 percent of the MPI.

The nature of the residues is adequately understood and an adequate analytical method, gas liquid chromatography using an electron capture detector, is available for enforcement purposes. There are presently no actions pending against the continued registration of the chemical.

Based on the information and data considered, the Agency concludes that the tolerances would protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this regulation in the Federal Register, file written objections with the Hearing Clerk at the address given above. Such objections



should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12211, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

#### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 23, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

#### PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.399 is amended by revising the entries in paragraph (a) for "almonds, hulls" and "almonds, nutmeat" to read as follows:

#### § 180.399 Iprodione; tolerances for residues.

(a) \* \* \*

Commodities	Parts per million
Almonds, hulls	2.0
Almonds, nutmeat	0.3

\* \* \*

[FR. Doc. 85-26450 Filed 11-5-85; 8:45 am]  
BILLING CODE 6560-50-M

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

#### 43 CFR Part 1820

[Circular No. 2568]

#### General Management; Change of Area of Jurisdiction and Responsibility in Colorado and New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction.

**SUMMARY:** In FR Doc. 85-21152 beginning on page 36055 in the issue of Thursday, September 5, 1985, the Circular No. in the heading should read as set forth above. This rulemaking transferred jurisdiction over public lands in the State of Kansas from the Colorado State Office to the New Mexico Office.

**FOR FURTHER INFORMATION CONTACT:** Ted Hudson (202) 343-8735.

James E. Cason,

Deputy Assistant Secretary of the Interior.  
October 31, 1985.

[FR Doc. 85-26459 Filed 11-5-85; 8:45 am]  
BILLING CODE 4310-84-M

#### FEDERAL EMERGENCY MANAGEMENT AGENCY

#### 44 CFR Part 65

#### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

**DATES:** The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-2768.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the flood plain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.



The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not

have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

#### List of Subjects in 44 CFR Part 65

Flood insurance, flood plains.  
The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.,  
Reorganization Plan No. 3 of 1978, E.O. 12127.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Florida: Dade (Docket No. FEMA-6672).	Unincorporated areas	July 9, 1985, July 16, 1985, <i>Miami Review</i> .	Hon. Merrett R. Stierheim, County Manager, Dade County, 73 West Flagler Street, Room 911, Miami, FL 33130.	July 3, 1985	125098
Monroe (Docket No. FEMA-6672).	Unincorporated areas	July 18, 1985, July 26, 1985, <i>The Reporter</i> .	Hon. Kermit Lewin, County Administrator, Monroe County, P.O. Box 93, Key West, FL 33040.	July 5, 1985	125129
Georgia: Cobb (Docket No. FEMA-6672)	City of Marietta	July 12, 1985, July 19, 1985, <i>Marietta Daily Journal</i> .	Hon. Robert E. Flournoy, Jr., Mayor, City of Marietta, 205 Lawrence Street, Marietta, GA 30061.	June 28, 1985	130226
Indiana: Allen (Docket No. FEMA-6672).	City of Fort Wayne	June 21, 1985, June 28, 1985, <i>The News Sentinel</i> .	Hon. Winfield Moses, Mayor, City of Fort Wayne, City/County Building, 1 Main Street, Fort Wayne, IN 46802.	June 17, 1985	180003
Pennsylvania: Westmoreland (FEMA Docket No. 6672).	Municipality of Murrysville	June 17, 1985, June 24, 1985, <i>Penn Franklin News</i> .	Hon. John M. Lynch, Chief Administrator of the Municipality of Murrysville, Westmoreland County, P.O. Box 127, Murrysville, PA 15668.	June 11, 1985	421207

Issued: October 9, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-26440 Filed 11-5-85; 8:45 am]

BILLING CODE 6718-03-M

#### 44 CFR Part 67

#### Final Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-2768.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

#### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.,  
Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

#### PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
<b>ARIZONA</b>	
Yuma (City), Yuma County (FEMA Docket No. 6612)	
Colorado River: 22nd Avenue extended to north side of Yuma levee	*135
Maps available for inspection at the Department of Development, 3 W 3rd Street, Yuma, Arizona.	
Yuma County (Unincorporated Areas) (FEMA Docket No. 6612)	
Colorado River: Extension of Avenue D to North Side of Yuma levee	*132
Maps available for inspection at the Department of Public Works, 2703 Avenue B, Yuma, Arizona.	



PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
<b>ARKANSAS</b>		<b>ARKANSAS</b>		<b>ARKANSAS</b>	
Arkadelphia (City), Clark County (FEMA Docket No. 6673)		Three Mile Creek: Approximately 35 feet downstream from the center of Midland Avenue.	*5,879	Maps available for inspection at the Planning and Engineering Department, Moore City Hall, Moore, Oklahoma.	
Cochita River: Approximately 2.9 miles upstream of Mill Creek confluence.	*197	Mitchell Creek: 150 feet downstream of center of U.S. Interstate 70.	*5,694		
Maps available for inspection at the Arkadelphia City Hall, 610 Caddo Street, Arkadelphia, Arkansas.		Maps available for inspection at the Planning Department, 806 Cooper Avenue, Glenwood Springs, Colorado.		<b>OREGON</b>	
<b>CALIFORNIA</b>		<b>Gunnison (City), Gunnison County (FEMA Docket No. 6643)</b>		<b>Portland (City), Multnomah, Clackamas, and Washington Counties (FEMA Docket No. 6656)</b>	
Avalon (City), Los Angeles County (FEMA Docket No. 6656)		Gunnison River: 400 feet west of the intersection of Eighth Street and Denver Street.	*7,685	Johnson Creek: Center of the intersection of Duke Street and SE 102nd Avenue.	*207
Aviston Canyon: Intersection of Crescent and Catalina Avenues.	*6	Maps available for inspection at the Planning Department, 201 West Virginia, Gunnison, Colorado.		Columbia River: 200 feet north of the intersection of Marine Drive and Northeast 148th Avenue.	*30
Pacific Ocean: Along shoreline at Catalina Avenue extended.	*5			Maps available for inspection at Engineering Department, 1220 SW 5th Avenue, Portland, Oregon.	
Maps available for inspection at City Hall, Avalon, California.		<b>Mesa County (Unincorporated Areas) (FEMA Docket No. 6656)</b>		<b>TENNESSEE</b>	
Laguna Beach (City), Orange County (FEMA Docket No. 6643)		Colorado River: 230 feet upstream from the center of U.S. Highway 6.	*4,698	Memphis (City), Shelby County (FEMA Docket No. 6630) (FEMA Docket No. 6656)	
Pacific Ocean: Along shoreline at Diamond Street extended.	*15	Maps available for inspection at the County Engineering Department, 1000 S. 9th Street, Grand Junction, Colorado.		Fletcher Creek:	
Maps available for inspection at City Hall, 505 Forest Avenue, Laguna Beach, California.				Just upstream of New Macon Road.	*252
<b>Los Angeles County (Unincorporated Areas) (FEMA Docket No. 6656)</b>		<b>Sheridan (City of), Arapahoe County (FEMA Docket No. 6656)</b>		Just downstream of Whitten Road.	*260
Pacific Ocean: At shoreline, approximately 600 feet south from the intersection of Mulholland Highway and Pacific Coast Highway.	*11	Bear Creek: Upstream edge of South Federal Boulevard Crossing.	*5,298	Fletcher Creek Lateral B:	
Maps available for inspection at Los Angeles County Flood Control District, 2250 East Alcazar Street, Los Angeles, California.		Maps available for inspection at City Hall, 4400 S. Federal Boulevard, Englewood, Colorado.		At mouth.	*257
<b>Oxnard (City), Ventura County (FEMA Docket No. 6656)</b>		<b>DELAWARE</b>		Just downstream of Raleigh LaGrange Road.	*260
Santa Clara River of Harbor Boulevard: 300 feet downstream.	*12	Sussex County (FEMA Docket No. 6656)		Tennile Creek:	
Santa Clara River Breakout: 150 feet upstream from mouth.	*7	Atlantic Ocean and Little Assawoman Bay:		About 480 feet upstream of Winchester Road.	*261
Pacific Ocean: Along shoreline, at West Fifth Street extended.	*10	North side of State Route 54 approximately 1,000' west of the intersection of State Route 54 and State Route 14.	*6	Just downstream of Raines Road.	*304
Maps available for inspection at City Hall, 300 West 3rd Street, Oxnard, California.		South side of State Route 54 approximately 1,000' west of the intersection of State Route 54 and State Route 14.	*7	About 0.87 mile upstream of Pilot Drive.	*324
<b>Porterville (City), Tulare County (FEMA Docket No. 6643)</b>		Maps available for inspection at the Planning and Zoning Office, Sussex County Courthouse, Room 112, Georgetown, Delaware.		Nonconna Creek:	
Tule River:		<b>IDAHO</b>		About 200 feet upstream of Airways Boulevard.	*243
Upstream edge of State Highway 85 Crossing.	*434	Eagle (City), Ada County (FEMA Docket No. 6656)		About 170 feet downstream of confluence of Hurricane Creek.	*247
Upstream edge of Jaye Street Crossing.	*443	Boise River: On upstream (east) side of Eagle Road (State Highway 96) at Ballantine Canal crossing.	*2,555	At confluence of Tennile Creek.	*255
Maps available for inspection at Engineering Department, City Hall, Porterville, California.		South Fork Boise River: Approximately 800 feet west along Mace Road from the Mason-Gatlin Canal Crossing.	*2,539	Maps available for inspection at the Office of Planning and Development, Memphis and Shelby County, 125 North Main, Memphis, Tennessee 38103.	
<b>Santa Barbara (City), Santa Barbara County (FEMA Docket No. 6656)</b>		Maps available for inspection at City Hall, 67 East State Street, Eagle, Idaho.		<b>TEXAS</b>	
Pacific Ocean: East Beach, at mouth of Sycamore Creek.	*6	<b>NEW YORK</b>		<b>Caldwell County (FEMA Docket No. 6643)</b>	
Mission Creek (shallow flooding only): Intersection of San Andres Street and Micheltorena Street.	*82	New Paltz (Town), Ulster County (FEMA Docket No. 6673)		San Marcos River:	
Arroyo Burro (shallow flooding only): Intersection of Palermo Drive and Amali Way.	*140	Walkill River:		1.35 miles upstream of State Route 142 extended in Martindale.	*537
Maps available for inspection at the Department of Building and Zoning, 1235 Chapala Street, Santa Barbara, California.		At upstream corporate limits.	*195	2.56 miles upstream of State Route 142 extended in Martindale.	*544
<b>COLORADO</b>		Downstream corporate limits.	*190	Upstream side of County Road 21 at county boundary.	*558
Glenwood Springs (City), Garfield County (FEMA Docket No. 6656)		State Route 299 bridge.	*190	Maps available for inspection at the Caldwell County Courthouse, Lockhart, Texas.	
Roaring Fork River: Approximately 300 feet east of the intersection of Midland Avenue and Latson Court along Latson Court.	*5,736	At the downstream corporate limits.	*186	<b>Conroe, City, Montgomery County (FEMA Docket No. 6673)</b>	
Colorado River: 350 feet south of the intersection of U.S. Highway 6 and Donagan Road.	*5,710	Maps available for inspection at the New Paltz Town Hall, New Paltz, New York.		Grand Lake Creek:	
		<b>OKLAHOMA</b>		Approximately .4 mile downstream of South Rivershire Drive.	*143
		Moore (City), Cleveland County (FEMA Docket No. 6656)		Downstream side of Gladstall Street.	*158
		North Fork River:		Approximately 300' upstream of Interstate Route 45.	*165
		Upstream side of NE 22nd Street.	*1,240	Upstream side of Belshire Drive.	*177
		Downstream side of NE 23rd Street.	*1,247	Approximately 700 feet upstream of Hickerson Street.	*185
		Approximately 500' upstream of NE 23rd Street.	*1,252	Silverdale Creek:	
				Approximately .9 mile downstream of Foster Drive.	*143
				Upstream side of Foster Drive.	*166
				Upstream side of Marilyn Street.	*176
				Approximately 400' feet upstream of Wagers Street.	*187
				Maps available for inspection at the Development Office, Conroe City Hall, 505 West Davis, Conroe, Texas.	
				<b>Lubbock (City), Lubbock County (FEMA Docket No. 6673)</b>	
				<b>Playa System E1:</b>	
				At Usica Avenue.	*3,247
				At upstream side of Wayne Avenue.	*3,252



PROPOSED BASE (100-YEAR) FLOOD  
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD). Modified
<b>WASHINGTON</b>	
Des Moines (City), King County (FEMA Docket No. 6656)	
Pacific Ocean: Along shoreline of Puget Sound approximately 475 feet west of the intersection of Marine View Drive South 249th Street	*13
Maps available for inspection at the Engineering Department, 21630 11th Avenue South, Des Moines, Washington.	
<b>WISCONSIN</b>	
Fond du Lac County (Unincorporated Areas), Wisconsin (FEMA Docket No. 6673)	
Taycheedah Creek:	
At mouth at Lake Winnebago	*750
Just downstream of Old County Highway	*1,016
De Neveu Creek:	
About 0.67 mile downstream of County Highway V	*774
About 0.7 mile upstream of U.S. Highway 45	*828
Luce Creek:	
At mouth at Lake Winnebago	*750
About 0.20 mile upstream of Prairie Road	*751
Maps available for inspection at the Engineering Department, P.O. Box 150, Fond du Lac, Wisconsin 54635-0150.	

Issued: October 9, 1985.

Jeffrey S. Bragg,  
Administrator, Federal Insurance  
Administration.

[FR Doc. 85-26444 Filed 11-5-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS  
COMMISSION

## 47 CFR Part 73

[MM Docket No. 83-97; RM-4235; RM-4428;  
RM-4881; RM-4967]FM Broadcast Station in Moscow and  
Wallace, ID; Othello and Pullman, WAAGENCY: Federal Communications  
Commission.

ACTION: Final rule.

**SUMMARY:** Action taken herein, at the request of Radio Palouse, Inc., substitutes Class C Channel 282 for Channel 285A in Pullman, Washington; modifies the licenses of Station KQQQ-FM, Pullman, and substitutes Channel 248 for unused and unoccupied Channel 282 at Wallace, Idaho. This action could provide Pullman with its second wide coverage FM station.

EFFECTIVE DATE: December 9, 1985.

ADDRESS: Federal Communications  
Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**  
Patricia Rawlings, Mass Media Bureau,  
(202) 634-6530.

## SUPPLEMENTARY INFORMATION:

## List of Subjects in 47 CFR Part 73

Radio.

## PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Third Report and Order (Proceeding  
Terminated)

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Moscow and Wallace, Idaho; Othello and Pullman, Washington); MM Docket No. 83-97, RM-4235, RM-4428, RM-4881, RM-4967.

Adopted: October 23, 1985.

Released: November 1, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Second Further Notice of Proposed Rule Making*, 50 FR 25432, published June 19, 1985, proposing the substitution of Class C FM Channel 248 for Channel 285A at Pullman, Washington, and the substitution of Channel 242A for Channel 249A at Othello, Washington. The *Notice* was issued in response to a counterproposal<sup>2</sup> filed by Radio Palouse, Inc.

("petitioner"), licensee of Station KQQQ-FM (Channel 285A), Pullman, Washington. Petitioner submitted comments restating its interest in the allotment and suggested an alternative to the Commission's proposal.<sup>3</sup>

2. Petitioner's alternate proposal suggests the allotment of Channel 282 to Pullman, Washington, as a substitute for Channel 285A and the substitution of Channel 248 for unused and unoccupied Channel 282 at Wallace, Idaho. Petitioner initially requested that Channel 282 be deleted from Wallace and substituted for Channel 285A at Pullman and the license of Station

KQQQ-FM be modified to specify Channel 282. This proposal was rejected in the *Second Report and Order* because the channel would have been short-spaced to a pending application for Channel 282 at Wallace, Idaho. Subsequently, the construction permit issued for Channel 282 at Wallace was rescinded due to the permittee's failure to construct. Therefore, Channel 282 at Wallace was made available for application during the "universal" window filing period of June 13, 1985, through July 12, 1985. No applications are currently pending for Wallace.

3. Both substitutions can be made in compliance with the minimum distance separation requirements provided site restrictions are imposed. Channel 282 can be allotted to Pullman, Washington, with a site restriction of 10.4 kilometers (6.5 miles) northeast of the community to avoid short spacing to Station KXDD, Channel 281, Yakima, Washington. Channel 248 at Wallace, Idaho, requires a site restriction of 18.0 kilometers (11.2 miles) south of the city, in order to avoid short spacings to Canadian Channel 248A at Trail, British Columbia, and Station KISC, Channel 251, Spokane, Washington. Since both communities are located within 320 kilometers (200 miles) of the U.S.-Canada border, concurrence from the Canadian government has been obtained.

4. In light of the above, and in order to provide Pullman and the surrounding area with its second wide coverage FM station, we believe the public interest would be served by the allotments of Channel 282 to Pullman, Washington, and Channel 248 to Wallace, Idaho. Since no other party expressed an interest in the use of the new channel at Pullman, we are herein modifying the license of Station KQQQ-FM to specify operation on Channel 282 in lieu of Channel 285A. See, *Modification of FM Station Licenses*, 98 F.C.C. 2d 916 (1984).

## PART 73—[AMENDED]

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective December 9, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following communities:

City	Channel No.
Wallace, Idaho	248, 264
Pullman, Washington	258, 282

<sup>1</sup> This community has been added to the caption.

<sup>2</sup> Petitioner initially responded to the *Further Notice of Proposed Rule Making*, 49 FR 11858, published March 28, 1984, which proposed the allotment of Channel 258 at Moscow, Idaho, in order to permit Station KRPL-FM to upgrade its facilities. The Commission issued its *Second Report and Order*, 50 FR 4220, published January 30, 1985, which allotted Channel 291 to Moscow, Idaho, and modified the license of Station KRPL-FM to specify operation on the new channel.

<sup>3</sup> Public Notice of the filing of the counterproposal was given April 29, 1985, Report No. 1511.



6. It is further ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, the license of Station KQQQ-FM, Pullman, Washington, is modified to specify operation on Channel 282 subject to the following conditions:

(a) At least 30 days before operating on Channel 282, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620; and

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission,  
Charles Schott,  
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-26323 Filed 11-5-85; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Parts 90 and 97

[PR Docket No. 84-874; FCC 85-574]

#### Implementation of the 1900-2000 kHz Frequency Band in the Radiolocation Service; Report and Order

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The FCC is implementing the 1900-2000 kHz band into the Radiolocation Service Table of Frequencies and adopting specific rules for use of frequencies in this band. This action is taken to provide replacement spectrum for systems that will be displaced from the 1605-1705 kHz Radiolocation band.

**EFFECTIVE DATE:** December 9, 1985.

**FOR FURTHER INFORMATION CONTACT:** Eugene Thomson, Private Radio Bureau, (202) 634-2443.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Parts 90 and 97

Private land mobile radio services; Radiolocation service; Radio.

Report and Order (Proceeding Terminated) (PR Docket No. 84-874).

In the matter of Amendment of Part 90 the Commission's Rules to Implement the 1900-2000 kHz Frequency Band in the Radiolocation Service

Adopted: October 28, 1985.

Released: October 31, 1985.

By the Commission.

#### Background

1. At the 1979 World Administrative Radio Conference (WARC) in Geneva, Switzerland, the attending nations agreed that the AM broadcast band would be extended from 1605 to 1705 kHz. It was also agreed that the 1850-2000 kHz band would be shared by the radiolocation and amateur radio services in Region 2, which comprises all of North and South America. In 1983, the Commission adopted rules in Gen. Docket No. 80-739. These rules allocated the 1900-2000 kHz band for primary use to the Radiolocation Service and for secondary use to the Amateur Radio Service.<sup>1</sup> Amateur use of 1900-2000 kHz was permitted pending a decision in a subsequent rule making proceeding as to future Amateur use of the band.<sup>2</sup>

2. On September 5, 1984, the Commission adopted a *Notice of Proposed Rule Making* that proposed to implement the 1900-2000 kHz band into Part 90 of its rules for Radiolocation Service use. The reason for this action was to permit the relocation of existing radiolocation systems operating in the 1605-1705 kHz band, in anticipation of the use of this band by AM Broadcasters.<sup>3</sup> On September 10, 1984, the American Radio Relay League, Inc.

<sup>1</sup> *Second Report and Order*, Gen. Docket No. 80-739, adopted November 8, 1983, 49 FR 2357, January 19, 1984. (Hereafter referred to as *Second Report and Order*.)

<sup>2</sup> This future rule making proceeding will be in conjunction with the implementation of the standard broadcasting service in the 1625-1705 kHz band. See *Second Notice of Inquiry*, Gen. Docket 84-467, released January 9, 1985. The initial meeting of the International Telecommunications Union Region 2 Administrative Radio Conference is scheduled for April 14 to May 2, 1986. The conference is expected to be concluded in 1986, and will develop a broadcasting plan for the use of the 1605-1705 kHz band in the Western Hemisphere.

<sup>3</sup> *Notice of Proposed Rule Making*, PR Docket No. 84-874, adopted September 5, 1984, released September 11, 1984, 49 FR 36526, September 18, 1984. (Hereafter referred to as *NPRM*.)

(League), filed a *Petition for Initiation of Inquiry Proceeding* requesting the Commission to study the present use of medium-frequency (MF) bands by non-government radiolocation users. Subsequently, the League filed a *Motion to Hold Notice of Proposed Rule Making in Abeyance or alternatively to Reissue as Notice of Inquiry*.<sup>4</sup> No action was taken on the Petition or the Motion.

3. The comment and reply comment periods in this proceeding were extended in order that interested parties would have sufficient time to explore the issues and submit their views.<sup>5</sup>

#### Notice of Proposed Rule Making

4. The NPRM specifically proposed to:

- Divide the 1900-2000 kHz band into 2 segments, using 1900-1950 kHz for exclusive assignments, and 1950-2000 kHz for shared assignments.

- Establish a separation distance of 1200 miles for stations operating on frequencies up to 1.2 kHz apart in the 1900-1950 kHz band.

- Reduce the authorized bandwidth from 2 kHz to 1 kHz.

- Allow wideband systems to operate in the MF radiolocation bands on a secondary basis.

#### Comments

5. Comments and replies were received from radiolocation industry organizations, amateur radio associations, and individual radio amateurs.<sup>6</sup> Radiolocation industry comments generally supported our proposals, stating that an ITU recommendation indicated that AM broadcasting in the 1605-1705 kHz band could begin as early as July 1987.<sup>7</sup> Since

<sup>4</sup> This Motion was filed on September 14, 1984.

<sup>5</sup> Initial comment and reply comment dates were October 28, 1984, and November 23, 1984. Upon request from the League, an extension of time was granted for submission of comments and replies to January 24, 1985 and March 11, 1985. A further extension of the reply comment period to April 2, 1985 was granted in response to a later request by the Quarter Century Wireless Association.

<sup>6</sup> Approximately 360 sets of comments were received from individual radio amateurs, one from a national amateur radio organization and six from radiolocation industry organizations. Reply comments were received from two national amateur radio associations and three radiolocation industry organizations. The reply comments of Offshore Navigation, Inc. (ONI) were received one day later but are hereby accepted. Sercoel, Incorporated submitted reply comments that did not address the issues involved in the NPRM, but presented a description of their spread spectrum radiolocation equipment presently in use in Europe. The issues raised by Sercoel, Inc. will be addressed in a future Commission proceeding.

<sup>7</sup> International Telecommunications Union Recommendation No. 504, pp REC 504-1.2.



this is not too far in the future, radiolocation organizations stated that the availability of the 1900-2000 kHz band for radiolocation systems should not be delayed. The radiolocation industry members also maintained that, while the comments of amateurs appeared to view the NPRM as an allocation proceeding, allocation issues were not relevant. Amateur comments opposed the NPRM, arguing that the issuance of the NPRM was procedurally improper, that the 1900-2000 kHz band should not be reallocated for radiolocation use, and that alternative spectrum and systems were available for radiolocation purposes.

#### Issues

##### *Propriety of Issuing NPRM*

6. The League argued that the issuance of the NPRM in this proceeding was procedurally improper, and that "... the fluid nature of the 1605-1705 kHz segment planning at present makes it inappropriate in the extreme to plan for the use of the 1900-2000 kHz segment as though it will be needed in its entirety for displaced radiolocation users." The League further stated that planning for the 1625-1705 kHz segment of the 1605-1705 kHz band was still in the inquiry stage, and pointed out that the *Second Notice of Inquiry* in the broadcast planning docket specifically invited comments on the ability of other services to share the 1625-1705 kHz segment with broadcast users.

7. We do not agree that the issuance of the NPRM in this proceeding was procedurally improper. The League, in their filings, asserted that the NPRM was issued without warning one day after the League had filed their *Petition for Initiation of Inquiry Proceeding*.<sup>9</sup> However, the NPRM in this proceeding was adopted by the Commission at an open meeting on September 5, 1984, with the Sunshine Notice for that meeting released one week beforehand. Consequently, proper agenda item procedures were followed by the Commission. Contrary to the arguments advanced by the League, we find that the issuance of the NPRM was procedurally proper.

##### *Implementation of the 1900-2000 kHz Band Into Part 90*

8. Many comments were received from amateur radio operators opposing the Commission's reallocation of the top half of the 160 meter band (1900-2000

kHz) to the offshore navigation service.<sup>10</sup> We reiterate, however, that the 1900-2000 kHz band has already been allocated for Radiolocation Service use. As the NPRM stated, the proposal was merely to implement the 1900-2000 kHz band into Part 90 of the Commission's Rules to provide spectrum for radiolocation systems that will eventually be displaced from the 1605-1705 kHz band. The allocation of this band for radiolocation use was made in the *Second Report and Order* and is not an issue in the current proceeding.

##### *Radiolocation in Medium Frequency Bands*

9. The League also argued that medium-frequency narrowband radiolocation is inappropriate at 1900-2000 kHz and that other radiodetermination systems, now in operation or in the developmental stage, would replace present medium-frequency narrowband radiolocation. These developments, the League asserted, would render continued MF operation unnecessary.<sup>11</sup> Offshore Navigation Inc. (ONI) responded that as offshore operations move further from land, higher frequency systems cannot provide the range of coverage required. Therefore, according to ONI, operations must shift to medium-frequency systems, which are the most precise systems capable of maintaining position control at extended ranges. Both ONI and Rascal Survey Inc. (Rascal) contended that the League's argument that future radiolocation systems, such as satellite systems, will displace present MF systems was speculative. Rascal stated it would be many years, if ever, before satellite systems could provide the accuracy needed by radiolocation users. According to Rascal "the need for highly accurate radiopositioning is immediate, and there will be no satisfactory substitute by the time the Commission is ready to implement AM radio broadcasting above 1605 kHz."<sup>12</sup>

10. ONI stated that "it cannot rely on the speculative nature of services which are not available and for which neither assurance nor date of commencement, nor performance characteristics, can be reliably predicted." ONI further stated that "(I)f, as suggested by the amateur community, MF band systems become technologically obsolete due to the advent of systems which provide greater accuracy or equivalent accuracy at

lower cost, the radiolocation use of the 1900-2000 kHz band will wither, and the amateurs, holding permitted status in the band, could expand their operations."<sup>13</sup>

11. With regard to the question of whether satellite systems would prove to be a satisfactory substitute for medium-frequency radiolocation systems, the National Ocean Industries Association (NOIA) indicated that the new Satellite Global Positioning System (GPS) would be deliberately degraded to 100 meter accuracy for general civil use, which is inferior to the capability of current radiolocation systems. NOIA stated that if differential techniques are employed, the degradation can be overcome, but a data link would be required between a fixed shore monitor station and the mobile users. According to NOIA, the 1900-2000 kHz radiolocation band is particularly attractive for this purpose since it is available world-wide and has suitable range characteristics.<sup>14</sup>

12. We have considered the comments concerning the appropriateness of radiolocation in the MF bands. We note that spectrum has been provided for radiolocation use in many frequency bands, including the MF bands. Licensees who choose to operate in the MF bands do so because of spectrum and equipment availability, economic and operational requirements, and technical considerations. We believe that when higher technology systems become available, and economic and operational considerations warrant a change, radiolocation licensees will opt for newer systems. For the present, however, there appears to be a valid operational requirement for radiolocation users to employ medium-frequency systems. The arguments presented by the amateur community against the use of the 1900-2000 kHz band by radiolocation users are basically the same as the arguments previously considered by the Commission in Docket No. 80-739. Since the instant proceeding does not deal with allocation matters but rather the implementation of the 1900-2000 kHz band into Part 90 of the Rules, comments on the merits of MF radiolocation are not directly relevant to the issues at hand. Accordingly, we are adopting our proposal to implement the 1900-2000 kHz frequency band into the Radiolocation Service Frequency Table in Section 90.103 of the Commission's Rules and Regulations. However, we also recognize that immediate access to

<sup>9</sup> League comments, page 9.

<sup>10</sup> Editorials in the Amateur publications, QST, December 1984, page 9, and Ham Radio Magazine, January 1985, page 5, apparently encouraged such filings.

<sup>11</sup> League comments, paragraphs 13-19.

<sup>12</sup> Recall reply comments, paragraph 10.

<sup>13</sup> ONI comments, paragraphs 9, 11.

<sup>14</sup> NOIA comments, paragraph 4.

<sup>8</sup> As explained above, this petition requested the Commission to study the present use of medium-frequency (MF) bands by non-government radiolocation users.



the band by radiolocation users may not be necessary because of the time frame concerning the takeover of the 1605-1705 kHz band by AM broadcasting. Accordingly, as indicated in paragraph 15, we are delaying the date on which the 1900-2000 kHz band becomes available for radiolocation use. Our purpose is to allow Amateur licensees adequate time to adjust their operations in anticipation of the use of the band by radiolocation users.

#### *Frequency Assignments for Displaced Systems*

13. NCS International, Inc. (NCS) suggested that a displaced licensee should be required to show need before it receives the same number of frequency assignments in the 1900-2000 kHz band which it holds in the band from which it will be displaced. It stated that almost all of the available spectrum in the MF radiolocation bands is in the control of a few licensees and that many of the channels may be underutilized. NCS expressed the belief that this situation has a preclusive effect on actual and potential competition. For this reason, NCS opposed any plan under which the Commission, without requiring a demonstration of need, would assign channels at 1900-2000 kHz in identical proportion to the number of channels which licensees have been assigned at 1605-1705 kHz.<sup>16</sup> We have considered this suggestion to require displaced licensees to show a need for replacement frequencies before receiving a one-for-one authorization for frequencies in the 1900-2000 kHz band. The primary objective of implementing the 1900-2000 kHz band into the Radiolocation Service rules is to provide spectrum for systems being displaced from 1605-1705 kHz band. To require these licensees to justify their new assignments would be similar to asking licensees in a service to justify their present authorizations.

14. Due to the nature of radiolocation operations, authorized frequencies are not always used continuously in all areas of operation. Licensees providing radiolocation service attempt to structure their frequency plans so as to be capable of providing service to their clients in the most expeditious and efficient manner. To require a showing of need in addition to having to change frequencies would impose a double burden upon licensees of displaced systems. Accordingly, we reject NCS' suggestion and will allow licensees displaced from the 1605-1705 kHz band to request frequencies in either the

shared or exclusive portions of the 1900-2000 kHz band on a one-for-one basis, i.e., one assignment at 1900-2000 kHz corresponding to each assignment licensed at 1605-1705 kHz.<sup>16</sup>

15. We will initially limit the authorization of frequencies in the 1900-2000 kHz band to existing systems which desire to move from the 1605-1705 kHz band and to two-frequency systems utilizing one frequency in the 1605-1705 kHz band and one frequency in another radiolocation band. We expect licensees to coordinate frequencies among themselves to minimize the potential of multiple applications being received for the same frequency in a particular geographical area. To allow licensees in the 1605-1705 kHz band sufficient time to revise their frequency requirements, we will begin accepting requests to modify their station authorizations to new frequencies on July 1, 1987. Thereafter, on July 1, 1988, we will open the 1900-2000 kHz band to new assignments on any remaining frequencies.<sup>17</sup> Licensees now operating

<sup>16</sup> It should be noted that licensees in the Radiolocation Service, like all Part 90 licensees generally, are subject to the provisions of 90.157 regarding discontinuance of operation. Section 90.157 provides that any station licensed under Part 90 which has not been operated for one year or more is considered to be permanently discontinued. This section requires licensees to forward the licenses of all permanently discontinued stations to the Commission for cancellation. Therefore, radiolocation licensees are under an existing obligation to return to the Commission the licenses for all stations which remain inactive for one year or more.

<sup>17</sup> We are creating a one year priority for licensees of systems at 1605-1705 kHz over all other radiolocation applicants in gaining access to the 1900-2000 kHz band because of the likelihood that existing radiolocation licensees at 1605-1705 kHz will have to eventually terminate all operations in the band. The priority given to licensees using 1605-1705 kHz is similar, in some respects, to the reaccommodation preferences given to Private Operational-Fixed Service (OFS) licensees at 12.2-12.7 GHz when the Commission reallocated the 12 GHz band for Direct Broadcast Satellite (DBS) operations. See *First Report and Order* in Gen. Docket 82-334 (FCC 83-393), released September 30, 1983, 48 FR 50,722 (November 3, 1983), in which the Commission permitted OFS licensees at 12 GHz to be licensed for replacement spectrum three years in advance of actually relocating their stations. Additionally, OFS licensees holding authorizations at 12.2-12.7 GHz were permitted to relocate their stations to the 12.7-13.2 GHz band, which was not available to other OFS applicants. The Commission determined that these special reaccommodation provisions for the licensees of 12 GHz OFS stations represented a proper exercise of the authority delegated by Congress under sections 4(i), 303(c), 303(r), and 403 of the Communications Act of 1934, as amended. We think these same statutory provisions provide adequate legal foundation for the priority access to 1900-2000 kHz which we are granting to licensees in the 1605-1705 kHz band.

in the 1705-1715 kHz portion of the 1605-1715 kHz band will not be displaced and may continue operations under existing authorizations. These licensees will be eligible for frequencies in the 1900-2000 kHz band after July 1, 1987.

16. We have considered the comments regarding our proposed lottery procedures and conclude that random selection procedures as described in § 1.972 of the Rules will be used to select among competing applicants if necessary. The Commission will be receptive to settlement agreements among competing applicants. All applicants are encouraged to consider any settlement proposals which may be proffered. Only settlement agreements which eliminate mutual exclusivity for an entire area will be considered. Partial settlements will not be considered by the Commission and all settlement agreements are subject to final approval by the Commission.

#### *Exclusive/Shared Assignments*

17. In the NPRM we proposed to divide the 1900-2000 kHz band into two equal segments, using 1900-1950 kHz for exclusive assignments, and 1950-2000 kHz for shared assignments. Racal expressed concern with this proposal, indicating that more exclusive channel assignments should be made, with only a small portion, e.g., 10 to 20 kHz, reserved for shared operations by occasional users. They further recommended that the Commission permit licensees to obtain blocks of channels to support their operations, and that a single licensee should be permitted up to ten 1 kHz "building blocks," which may be continuous or not, as the applicant prefers.

18. We have considered the comments on our proposal to divide the 1900-2000 kHz band into two equal segments. We feel that the "building block" allocation as proposed by Racal is not feasible. If such a system were implemented, many applicants would likely apply for the maximum number of channels allowed. We feel that a large percentage of applicants would not need all the channels, with the result that frequencies would lie fallow, while other applicants may require more channels than the permitted maximum. It is our belief, therefore, that the "building block" approach to the assignment of spectrum would not result in a particularly efficient allotment of spectrum among users. Also, division of the 100 kHz of spectrum into 10 kHz blocks and assignment of one block to each licensee would unnecessarily restrict the number of users to ten. Since

<sup>18</sup> NCS comments, paragraph 2.



there are presently more than ten separate entities licensed in the MF radiolocation bands, some licensees would be denied access to 1900-2000 kHz under Racal's proposal. Accordingly, we are adopting our proposal that the 1900-2000 kHz band be divided into two 50 kHz segments, with the 1900-1950 kHz portion of the band available for exclusive assignments and the 1950-2000 kHz portion for shared assignments. Applicants requesting authorization to operate at temporary fixed locations shall apply for frequencies in the 1950-2000 kHz shared portion of the band.

#### Interference Protection Criteria

19. The NPRM proposed to establish a separation distance of 1200 miles for stations operating on frequencies up to 1.2 kHz apart in the 1900-1950 kHz exclusive assignment band. Most commenters agreed that an increase in the separation distance from the present 360 miles was necessary and did not disagree with our 1200 mile proposal. One commenter, NCS, claimed that increasing the separation would have a preclusive effect, arguing that a station operation at any point along the U.S. coast in the Gulf of Mexico would preclude any other station from operating on a frequency within 1.2 kHz anywhere in the Gulf. We agree that increasing the separation distance between assignments decreases the re-use capabilities of the available frequencies and the number of channels that can be utilized along the entire coastline.<sup>18</sup> To counteract this, we also proposed to double the amount of available channels by reducing the authorized bandwidth. Radiolocation operations previously were conducted mainly during daylight hours, but are now conducted around the clock. Skip propagation between dusk and dawn can carry signals 1000 miles or more. Therefore, in order to provide effective protection against such interference, an increase in the exclusivity distance is required. Consequently, we are adopting 1200 miles as the separation distance for exclusive channels in the 1900-1950 kHz band. However, this requirement will not bar a licensee from operating closer spaced stations under its own control and thus subject to coordinated operation. Further, the 1750-1800 kHz band remains available for users desiring the shorter 360 mile spacing between stations.

20. Under the proposal, the 1200-mile separation distance would have applied to stations operating on frequencies less

than 1.2 kHz apart. Both Racal and NCS took the position that 1.2 kHz separation is excessive, pointing to the capability of existing technology and systems currently available. Racal considered 1 kHz separation to be more appropriate whereas NCS believed 500 Hz separation could be accomplished. Because of the characteristics of present radiolocation equipment, we believe it is appropriate to reduce the separation criteria from 1.2 kHz as proposed to 1 kHz. Since we also are reducing the maximum authorized channel bandwidth to 1 kHz, this would allow adjacent channels to be used in the same geographical area. This will provide sufficient interference protection to exclusive assignments while increasing the effective use of the spectrum. Furthermore, this reduction reflects reasoned consideration and recognition of the advancements in technology used for radiolocation services.

21. The NPRM also proposed that if less than 1,200 miles separation between stations of different licensees is desired, it must be shown that the requested separation will result in a protection ratio of at least 20 dB throughout the primary service area of other stations.<sup>19</sup> Racal commented that 30 dB of protection is required or positioning accuracy will be compromised. We do not dispute that a 30 dB protection ratio would cause less interference and theoretically improved radiolocation operations. Our present rules have a protection ratio of 20 dB, which was established some 34 years ago.<sup>20</sup> We have not received any indication of operational problems with 20 dB, and no other commenters in this proceeding supported Racal's arguments in favor of 30 dB. We therefore will retain our proposed 20 dB protection criteria.

#### Bandwidth

22. The NPRM proposed to reduce the authorized bandwidth from 2 kHz to 1 kHz to effectively double the number of available channels. The comments supported this proposal. Teledyne Hastings-Radiet (THR) suggested a 1.5 kHz bandwidths to accommodate new equipment that it is developing. Since our intent is to maximize the number of channels available in the 1900-2000 kHz band, we do not feel that there is any justification to increase the authorized bandwidth from the proposed 1 kHz to

accommodate a particular radiolocation system. Such equipment may still be utilized in other radiolocation bands where a 2 kHz bandwidth is authorized. Furthermore, THR has offered no operational or technical benefits that would accrue from its new equipment or that could be derived from establishing a 1.5 kHz channel bandwidth. Accordingly, we are adopting our proposal to establish a maximum authorized bandwidth of 1 kHz for the 1900-2000 kHz radiolocation band.

#### Wideband Operations

23. In the interest of promoting the development and use of new technology, we proposed to allow the use of low powered, wideband spread spectrum radiolocation systems on a secondary basis in the MF radiolocation bands. This proposal was supported by ONI and opposed by THR, Racal, and NCS. THR commented that wideband systems, regardless of their very low radiated power, will interfere with existing systems by creating increased noise levels, slightly reduced operating range, and increased susceptibility to skywave radiation. Racal stated that spread spectrum is an inappropriate technique for frequencies in the 2 MHz band, and that such operations should not be authorized. It further said that if spread spectrum systems are to be allowed, they should be limited to 0.2 microwatt per Hertz radiated power in order to protect fixed frequency narrowband systems.<sup>21</sup> NCS commented that spread spectrum systems may cause interference to existing conventional users and may preclude the operation of other spread spectrum systems in the same band.

24. The NPRM proposed to allow wideband systems to operate in all radiolocation bands from 1605 kHz to 2000 kHz. Since the 1605-1705 kHz band is destined for AM broadcasting use, we will no longer allow new systems, whether wideband or narrowband, to be authorized in that band. Consequently, the only remaining bands for wideband systems would be the 1715-1750, 1750-1800, and 1800-2000 kHz bands. Wideband systems, as their name implies, require as wide a band as possible for optimum operation and therefore would benefit more from operation in the 1900-2000 kHz band. Furthermore, considering the concerns of licensees in the 1715-1750 and 1750-

<sup>18</sup> The service area definition is the same as that given in 47 CFR 90.103(c)(7) for the 1750-1800 kHz band.

<sup>19</sup> The 20 dB protection ratio was established in the Report and Order, Docket No. 9293, issued December 19, 1951.

<sup>21</sup> It appears that the 0.2 microwatt per Hertz radiated power level is based on a 30 dB protection level as indicated in the interference calculations included in the Racal-Decca Survey, Inc. reply comments in Gen-Docket No. 81-413.

<sup>18</sup> See NPRM, *supra*, paragraph 6.



1800 kHz bands about interference to existing narrowband systems by wideband systems, we are limiting wideband operation to one MF radiolocation band until a more complete record concerning co-existence of wideband and conventional narrowband systems is obtained. Therefore, wideband systems will be authorized to operate, on a secondary basis, only in the 1900-2000 kHz band with an authorized bandwidth of 100 kHz.<sup>22</sup>

25. Limiting wideband operation to the 1900-2000 kHz band will prevent possible co-channel interference to existing users in other radiolocation bands. Also, wideband systems can be authorized immediately in the 1900-2000 kHz band since relocating displaced systems from the 1605-1705 kHz band will not begin until July 1, 1987. Present amateur operations, which are secondary in the 1900-2000 kHz band, should not be affected by wideband radiolocation systems except possibly in rare cases of close geographical proximity. To minimize interference to future narrowband systems sharing the 1900-2000 kHz band, we are also adopting our proposal to limit the transmitter power of wideband systems. We are limiting the field strength to 120 microvolts per meter per square root Hertz at 1 mile (i.e., 120  $\mu\text{V}/\text{m}/\text{Hz}^{1/2}$  at 1 mile). A field strength of 120 microvolts per meter per  $(\text{Hz})^{1/2}$  at 1 mile with a bandwidth of 100 kHz is roughly equivalent to a radiated power of 1.4 microwatts per Hz. It would appear that this low power level will be sufficient to minimize interference to co-channel narrowband systems.

#### *Protection Criteria for Other Radiolocation Bands*

26. Finally, we requested comments on whether it would be appropriate to modify the protection criteria for systems in the 1750-1800 kHz radiolocation band, or whether the protection criteria currently in effect for that band should be retained in order to accommodate older systems and existing assignment patterns. ONI addressed this subject suggesting a two-stage licensing program. Under the ONI plan, licensees in the 1750-1800 kHz exclusive band would be the first to be allowed to move to the new 1900-2000 kHz exclusive band. When the band is cleared out, protection standards would be changed to conform to those adopted

for the 1900-1950 kHz band. Thereafter, licensees operating below 1705 kHz who would be displaced by the Broadcast Service would be accorded priority to relocate to either exclusive band. Rcal believed that virtually all systems in use today can operate within the technical standards it presented in its comments and that those new standards should be applied to all radiolocation stations between 1605 and 2000 kHz.

27. ONI's proposed licensing program is not in accord with our primary purpose of making spectrum available initially to licensees that will be displaced from the 1605-1705 kHz band. Considering that there may be older equipment in operation that might not conform to the new technical standards, and that not all licensees would desire to move from the 1750-1800 kHz band to the new band because of economic or technical considerations, we have decided to retain the present standards for the 1750-1800 kHz band.

28. We are also amending the Part 97 Amateur Radio Service rules to indicate that, as stated in the Second Report and Order, amateur radio operators transmitting in the 1900-2000 kHz frequency band must do so on a secondary non-interference basis to operations in the Part 90 Radiolocation Service. We note that for the near term amateur operations will continue to have virtually exclusive non-government use of this band until such time as private radiolocation transmitters become operational.

29. Finally, it must be recognized that the 1900-2000 kHz band is shared on a co-primary basis with the government radiolocation service. Therefore, all applications will require coordination through the frequency assignment subcommittee of the IRAC similar to the coordination which now takes place in the 1605-1705 kHz band.

#### **Final Regulatory Flexibility Analysis**

30. This proceeding provides radio spectrum for those radiolocation licensees who will be displaced from the 1605-1705 kHz radiolocation band because of Commission decisions based upon the 1979 World Administrative Radio Conference. No comments were received which addressed issues specifically related to the Initial Regulatory Flexibility Act Analysis. The proposed rules were developed to enable these displaced licensees to continue operation in the new 1900-2000 kHz radiolocation band, and to minimize the regulatory burden to all users of this band, including small businesses. Since no alternative regulatory approaches were suggested in

the comments to further reduce the anticipated burden on small businesses, we see no need to modify the regulatory structure as proposed in the NPRM.

#### **Paperwork Reduction Act Statement**

31. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

#### **Ordering Clauses**

32. Accordingly, it is ordered, effective December 9, 1985, that Part 90 of the Commission's Rules (47 CFR Part 90) is amended as set forth in the attached Appendix. The authority for this action is found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended. It is further ordered that both the Petition for Initiation of Inquiry Proceeding and the Motion to Hold Notice of Proposed Rule Making in Abeyance or Alternatively to Reissue as Notice of Inquiry, filed by the American Radio Relay League, Inc. are denied, and that this proceeding is terminated.

33. For further information concerning this proceeding contact Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, telephone (202) 634-2443.

Federal Communications Commission.

William J. Tricarico,

Secretary.

#### **Appendix**

Parts 90 and 97 of the Commission's Rules and Regulations are amended as follows:

The authority citations for Parts 90 and 97 continue to read as follows:

**Authority:** Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

#### **PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

1. In § 90.103(b) the Radiolocation Service Frequency Table is amended by revising the entry for 1605-1715 Kilohertz, and adding entries for 1900-1950 and 1950-2000 Kilohertz, as follows:

##### **§ 90.103 Radiolocation Service.**

• • • • •  
(b) • • •

<sup>22</sup> Secondary operation is defined as radio communications which may not cause interference to operations authorized on a primary basis and which are not protected from interference from those primary operations. See CFR 90.7.



## RADIOLOCATION SERVICE FREQUENCY TABLE

Frequency band	Class of Stations	Limitations
Kilohertz		
1605 to 1715	do	4, 5, 6, 28, and 29.
1900 to 1950	do	5, 25, 26, 27, and 30.
1950 to 2000	do	5, 25, 27, and 30.

2. New paragraphs § 90.103(c) (25), (26), (27), (28), (29), and (30) are added to read:

(c) \* \* \*

(25) Station assignments on frequencies in this band will be made subject to the conditions that the maximum output power shall not exceed 375 watts and the maximum authorized bandwidth shall not exceed 1.0 kHz.

(26) Each frequency assignment in this band is on an exclusive basis within the primary service area to which assigned. The primary service area is the area where the signal intensities are adequate for radiolocation purposes from all stations in the radiolocation system of which the station in question is a part; that is, the primary service area of the station coincides with the primary service area of the system. The normal minimum geographical separation between stations of different licensees shall be at least 1200 mi. (1931 km.) when the stations are operated on the same frequency or on different frequencies separated by less than 1.0 kHz. Where geographical separation of less than 1200 mi. (1931 km.) is requested under these circumstances, it must be shown that the desired separation will result in a protection ratio of at least 20 decibels throughout the primary service area of other stations.

(27) Notwithstanding the bandwidth limitations otherwise set forth in this section of the rules, wideband systems desiring to operate in this band may use such bandwidth as is necessary for proper operation of the system provided that the field strength does not exceed 120 microvolts per meter per square root Hertz (120  $\mu\text{V}/\text{m}/\text{Hz}^{1/2}$ ) at 1 mile. Such wideband operations shall be authorized on a secondary basis to stations operating within otherwise applicable technical standards.

(28) Since the 1605-1705 kHz band has been reallocated for AM broadcasting, no new assignments in the 1605-1705 kHz portion of this band shall be made after September 30, 1985.

(29) Beginning July 1, 1986, licensees of stations authorized frequencies in the 1605-1705 kHz portion of this band may request modification of their

authorizations to change frequencies to the 1900-2000 kHz band.

(30) Until July 1, 1987, this band will be available only for licensees of stations operating in the 1605-1705 kHz portion of the 1605-1715 kHz band requesting modification of their authorizations to change frequencies to this band. On July 1, 1987, requests for new station authorizations in this band will be accepted and, if necessary, will be subject to the random selection procedures outlined in § 1.972 of the Commission's Rules.

## PART 97—AMATEUR RADIO SERVICES

3. Section 97.7 is amended by revising the table in paragraph (a) by replacing each of the single entries for 160 meters under the General, Advanced and Amateur Extra control operator license classes with two separate entries for 160 meters, and by adding a new limitation (16) to paragraph (b) as follows:

## § 97.7 Control operator frequency privileges.

(a) \* \* \*

Control operator license class	Meter band	Terrestrial location of the amateur radio station			Limitations (see para. (k))
		ITU region 1	ITU region 2	ITU region 3	
General	160		Kilohertz 1800-1900	1800-1900	16
	180		1900-2000	1900-2000	
Advanced	160		Kilohertz 1800-1900	1800-1900	16
	180		1900-2000	1900-2000	
Amateur Extra	160		Kilohertz 1800-1900	1800-1900	16
	180		1900-2000	1900-2000	

## (b) Limitations:

(16) Amateur stations operating in this frequency band must not cause harmful interference to the radiolocation service and are afforded no protection from interference due to the operation of stations in the radiolocation service in this band.

[FR Doc. 85-26483 Filed 11-5-85; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR, Parts 172, 173, 174 and 176

[Docket No. HM-180 and HM-188B; Amdt. Nos. 172-98, 173-191, 174-47, and 176-22]

## Placarding of Empty Tank Cars; Transportation of Hazardous Materials Between Canada and the United States; Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction of final rules.

SUMMARY: This document corrects a final rule in Docket HM-180 published on September 26, 1985, (50 FR 39005)

concerning the placarding of empty tank cars and a final rule in Docket HM-188B published on October 11, 1985 (50 FR 41516) concerning transportation of hazardous materials between Canada and the United States. This action is necessary to correct editorial and typographical errors contained in these final rules.

In Docket HM-188B, the reference "§ 171.12a" is incorrectly shown as "§ 173.12a" in the changes to § 173.314 and § 176.11 which appear on FR page 41521.

In Docket HM-180, the revision to § 172.525(a)(2), which appears on FR page 39007 is corrected to exclude the POISON GAS, EXPLOSIVES, AND RADIOACTIVE placards from the requirement to display the identification number across the midsection of each RESIDUE placard, in order to be consistent with the requirements of § 172.334(a). In the change to paragraph (a)(10) of Appendix B to Part 172, which appears on FR page 39008, the word "above" in the text to the last sentence is corrected to read "below". In the change to § 174.25(c), which appears on FR page 39008, the language in the first sentence is corrected to except tank cars containing combustible liquids from the provisions for using "RESIDUE" as part of shipping paper descriptions, and the



last sentence is corrected to show the "RQ" is entered on the shipping paper for an empty tank car only if the tank car still contains a reportable quantity of a hazardous substance.

**FOR FURTHER INFORMATION CONTACT:** Lee Jackson, Office of Hazardous Materials Transportation (OHMT), U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202-426-2075).

In consideration of the foregoing the following corrections are made in Dockets HM-180 and HM-188B.

1. On page 50 FR 39007 (Docket HM-180), the first sentence of paragraph (a)(2) of § 172.525 is revised to read as follows:

§ 172.525 Standard requirements for the RESIDUE placard.

(a) \* \* \*

(2) Except for the POISON GAS, RADIOACTIVE or EXPLOSIVES placard, the midsection of each RESIDUE placard must display the appropriate identification number as specified in § 172.332 (c) and (d). \* \* \*

2. On page 50 FR 39008 (Docket HM-180), in paragraph (c)(10) of Appendix B to Part 172, the penultimate sentence is amended by changing "above" to "below".

3. On page 50 FR 41521 (Docket HM-188B), in item 9, § 173.314(h) and item 13, § 176.11(b), the reference to "§ 173.12a" is corrected to read "§ 171.12a".

4. On page 50 FR 39008 (Docket HM-180), paragraph (c) of § 174.25 is revised to read as follows:

§ 174.25 Additional information on waybills, switching orders and other billings.

(c) For a tank car that contains only the residue of a hazardous material, other than a combustible liquid, the shipping papers must contain the words "RESIDUE: Last Contained \* \* \*", the basic description of the hazardous material last contained in the tank car and the placard notation specified in the second column of the table in paragraph (a)(2) of this section followed by the word RESIDUE. For example, "RESIDUE: Last Contained Sulfuric acid, Corrosive material, UN1830, Placarded: CORROSIVE-RESIDUE". For a tank car that contains a residue that is a hazardous substance, the letters "RQ" must also be entered on the shipping paper either before or after the basic description.

Issued in Washington, DC on November 1, 1985 under the authority delegated in 49 CFR 1.53, Part 1, Appendix A.

M. Cynthia Douglass,  
Administrator, Research and Special  
Programs Administration.  
[FR Doc. 85-26498 Filed 11-5-85; 8:45 am]  
BILLING CODE 4910-80-M

#### 49 CFR Part 173

[Docket No. HM-172B; Amdt. No. 173-194]

#### Cylinder Retester Identification Procedures

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the requirements for the periodic retesting of cylinders by requiring that cylinders be marked with the cylinder retester's identification number. This action will provide the means to trace the retester of a given cylinder and thereby enhance DOT's ability to provide safety oversight of cylinder retesting. The intended effect of this action is to identify individuals who are retesting DOT cylinders. In adopting these procedures and requirements, it is necessary to revise § 173.300a to reflect that DOT approved independent inspection agencies will be eligible to perform inspections in functional areas other than the currently stated limitation to manufacturer's testing under Part 178.

**EFFECTIVE DATE:** January 15, 1986.

**FOR FURTHER INFORMATION CONTACT:** David E. Henry, Office of Hazardous Materials Transportation (OHMT), Research and Special Programs Administration, Washington, D.C. 20590, (202) 472-5892 or Marilyn Morris, (202) 426-2075.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 4, 1984, RSPA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (49 FR 39177). The NPRM proposed certain procedures requiring a cylinder retester to mark a retested DOT cylinder with an identification number (issued by RSPA). The proposed identification number would be placed between the month and year of the retest date on each cylinder retested. The NPRM also proposed additional changes to permit an approved independent inspection agency to perform inspection functions as authorized by any provision in the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-179) for which it has been qualified. This final rule contains

amendments to the OHMT which are based on the proposals contained in the NPRM and the comments received in response to that NPRM. Interested persons should refer to Notice 84-12 (49 FR 39177) for detailed background information.

RSPA received 32 written comments in response to Notice 84-12, most of which came from manufacturers of fire fighting equipment. Comments were also received from two trade associations, the Air Transport Association (ATA), and The Chlorine Institute, Inc. The majority of the respondents were supportive of the proposal.

A discussion of the significant comments and amendments adopted in this final rule follows:

Three commenters expressed their concern that cylinder logos (an identifying statement) which each of their companies have used for years to identify their own cylinders, and which are recognized in their own geographic areas, would no longer be allowed; one of the three commenters suggested that the use of a symbol or logo should be allowed as an option. RSPA disagrees. RSPA views logos, to which several companies subscribe, as only being recognizable in small geographic areas. There are situations where two or more companies located in different parts of the country are using the same logos. In the case of symbols, there is no easy way to distinguish a retester's symbol from those of cylinder owners, users, manufacturers, or inspectors. In addition, RSPA is unable to register retester's logos on its automatic data processing equipment.

The ATA, which represents carriers that contract with independent agencies for the hydrostatic retesting of cylinders, and four other commenters expressed concern that the proposed markings will require additional space on the cylinder shoulder, and more work for retesters because of the additional required markings. RSPA disagrees. During the past few years, RSPA has observed the proposed identification system in use, both domestically and internationally. A number of retesters have been marking their cylinders in the manner proposed in the NPRM, using one die containing all characters of the identification number. The one die concept has produced legible markings and the process takes less of the retester's time than the application of single character dies. RSPA has observed the one die concept for marking cylinders undergoing retest, and found that the amount of space needed for marking the retested cylinders only increased slightly.



The Chlorine Institute (CI), a trade association which represents chlorine producers and packagers engaged in packaging chlorine into cylinders, took strong exception to the proposed marking procedures. They stated that chlorine is distributed primarily by companies that, for the most part, conduct their own hydrostatic tests. The CI argued that these companies maintain meticulous cylinder retest records and maintain complete control and accountability for their own cylinders. Therefore, these members do not support the proposal on the basis that the identification requirements would serve no useful purpose. RSPA disagrees. Although the chlorine industry may be doing an excellent job of retesting and keeping track of their cylinders, there is a larger number of users that are not willing or able to be as meticulous. Furthermore, RSPA takes the position that retest records do not facilitate compliance oversight unless there is traceability from the cylinder to the records.

A few commenters raised issues which were beyond the scope of this NPRM.

In consideration of the comments received, RSPA is adopting the amendments proposed in Docket HM-172B. In this final rule, the subparagraphs appearing under § 173.34(e)(1), differ from those proposed, only to the extent that some of the wording has been changed and subparagraphs (i)-(iii) were broken up to improve clarity, which resulted in the addition of subparagraphs (v) and (iv). The text remains the same as proposed. In § 173.34, paragraph (e)(6), RSPA has provided for the authorization of cylinder markings to differ from the published requirements only upon approval by the Director for OHMT. This provision was added as the result of a commenter who pointed out that some very small cylinders might make conformance with the marking requirements impossible.

#### Administrative Notices

a. *Non-Major Rule.* RSPA has determined that this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant regulation under DOT's regulatory policy and procedures (44 FR 11034), and requires neither a Regulatory Impact Analysis nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

b. *Paperwork Reduction Act.* Information collection requirements contained in this regulation which

pertain to the procedures that cylinder retesters must follow have been approved by OMB under control number 2137-0022.

c. *Impact on Small Entities.* Based on limited information available concerning size and nature of entities likely to be affected, I certify that this final rule would not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A regulatory evaluation is available for review in the Docket.

#### List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

### PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

In consideration of the foregoing, Part 173 is amended as follows:

1. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806; 49 CFR 1.53 unless otherwise noted.

2. In § 173.34 the introductory text to paragraph (e), paragraphs (e)(1), (e)(6) and Note 1 in paragraph (e)(9) are revised and the OMB number is added to read as follows:

#### § 173.34 Qualification, maintenance and use of cylinders.

(e) *Period retesting, reinspection and marking of cylinders.* Each cylinder that becomes due for period retest as specified in the following table and exceptions, must be retested and marked in conformance with the applicable requirements of this paragraph.

(1) The periodic retest must be performed by an authorized retester and must include a visual internal and external examination in accordance with CGA Pamphlet C-6, and a test interior hydrostatic pressure in a water jacket or other apparatus suitable for determination of the expansion of the cylinder. The internal inspection may be omitted for cylinders of the type and in the service described under paragraphs (e)(9) and (10) of this section.

(i) No person may represent that he has retested a DOT specification cylinder under this section, by marking the cylinder with a test date or by any other means unless that person holds a current retester's identification number issued by the RSPA.

(ii) The marking of a test date on a DOT specification cylinder is the certification by the person affixing the

date that all applicable requirements of this section have been met with respect to that cylinder.

(iii) No cylinder required to be retested in accordance with this paragraph, or paragraphs (e)(9) or (10) of this section, may be used for the transportation of a hazardous material unless it has been retested successfully under this section, and the retester has marked the cylinder by stamping the cylinder retester identification number and date of retest plainly and permanently into the metal of the cylinder or on a metal plate which must be permanently secured to the cylinder.

(iv) RSPA may issue a retester's identification number based on an application and an inspection report of the applicant's facility and qualifications performed by an independent inspection agency approved pursuant to § 173.300a, and any other information available to RSPA. A retester's identification number in valid for five years from the date of issuance and may be renewed upon application to RSPA. Applications for renewal must be submitted at least 50 days prior to expiration of the number. An initial or renewal application may be obtained from the Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, D.C. 20590.

(v) Authority to perform retesting under this section, as reflected by assignment of a current retester identification number, remains valid as long as the level of personnel qualifications, and equipment used, is maintained at least equivalent to the level observed at the time of inspection by the independent inspection agency.

(6) Each cylinder passing retest must be marked with the cylinder retester's identification number set in a square pattern, between the month and year of the retest date, in characters not less than 1/8-inch high with the first character occupying the upper left corner of the square pattern. The second character must be in the upper right, the third in the lower right, and the fourth in the lower left. Example: A cylinder retested in May, 1984, and approved by a retester who has been issued identification number A123 would be stamped:

A 1

5 3 2 84



Variations from the marking requirements may be permitted upon written request to, and approval issued by, the Director, OHMT. Stamping must be in accordance with the location requirements of the cylinder specification. Date of previous tests must not be obliterated. Cylinders which are subject to the requirements under subparagraphs (8), (9) (modified hydrostatic test only), (10), and (12) are not required to be marked with a retester's identification number.

(9) \* \* \*

**Note 1.**—Cylinders requalified by the modified hydrostatic test method of external inspection shall be marked after each retest or reinspection by stamping the date of retest or reinspection on the cylinders followed by the symbol E (external inspection) or S (modified hydrostatic test method) as appropriate.

(Approved by the Office of Management and Budget under control number 2137-0022).

3. In § 173.300a, paragraph (d) is amended by adding a sentence at the end of the paragraph to read as follows:

**§ 173.300a Approval of independent inspection agency.**

(d) \* \* \* After approval, the Director, OHMT, may authorize, upon request, the independent inspection agency to perform other inspections and functions for which the Director, OHMT, finds the applicant to be qualified. Such additional authorizations will be noted on each inspector's approval documents.

Issued in Washington, D.C. on November 1, 1985, under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,  
Administrator, Research and Special  
Programs Administration.

[FR Doc. 85-26499 Filed 11-5-85; 8:45  
BILLING CODE 4910-60-M]

**National Highway Traffic Safety  
Administration**

**49 CFR Part 571**

[Docket No. 74-14; Notice 42]

**Federal Motor Vehicle Safety  
Standards; Improvement of Seat Belt  
Assemblies**

**AGENCY:** National Highway Traffic  
Safety Administration (NHTSA).  
Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** On April 12, 1985, NHTSA issued a notice proposing modifications to certain aspects of the comfort and convenience performance requirements in Standard No. 208, *Occupant Crash Protection*. The agency's purpose was to clarify the intent of the requirements and to address the concerns raised in petitions for reconsideration received from seven vehicle manufacturers regarding the final rule on comfort and convenience issued on January 8, 1981. This notice sets comfort and convenience performance requirements for both manual and automatic safety belt assemblies installed in motor vehicles with a Gross Vehicle Weight Rating of 10,000 pounds or less. The April 12, 1985 notice also proposed to change the effective date of the comfort and convenience requirements. A final rule setting the effective date as September 1, 1986, was issued on August 23, 1985.

**DATE:** The effective date is September 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Nelson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2264).

**SUPPLEMENTARY INFORMATION:** On January 8, 1981 (46 FR 2064), NHTSA amended Safety Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), to specify additional performance requirements to promote the comfort and convenience of both manual and automatic safety belt systems installed in motor vehicles with a GVWR of 10,000 pounds or less. The final rule included specifications relating to the following aspects of safety belt performance and design: latchplate accessibility, safety belt guides, adjustable buckles for certain belts, shoulder belt pressure, convenience hooks, belt retraction, and comfort devices. Type 2 manual belts (lap and shoulder combination belts) installed in front seating positions in passenger cars were excepted from these additional performance requirements, since it was assumed such belts would be phased out in passenger cars as the automatic restraint requirements of Standard No. 208 became effective.

Seven petitions for reconsideration of the January 8, 1981 amendment were received from vehicle manufacturers. On February 18, 1982 (47 FR 7254), the agency issued a partial response to the petitions for reconsideration by extending the effective date of the comfort and convenience requirements for one year, from September 1, 1982, to

September 1, 1983. Subsequently, the agency proposed (47 FR 51432) and then adopted (48 FR 24717), a further extension of the effective date for the requirements until September 1, 1985.

The April 12, 1985 (50 FR 14580) notice proposed to delay the effective date until September 1, 1986, in order to give the industry sufficient leadtime to meet the proposed changes in the rule. A final rule delaying the effective date to September 1, 1986, was issued on August 23, 1985 (50 FR 34152).

As discussed in the April 12, 1985 notice, the agency continues to believe that certain of the performance requirements included in the final rule will tend to enhance safety belt use by providing occupants with safety belts which are more comfortable to wear and more convenient to use. The requirements in this final rule are important to support the agency's program to increase safety belt use in the U.S.

This rule makes minor changes to the modifications proposed in April 1985, in response to concerns raised by the commenters. A discussion of these changes is set forth below. (For a complete understanding of the performance requirements discussed in this notice, including the relationship of the requirements to safety belt comfort and convenience, interested persons should refer to both the December 31, 1979 (44 FR 77210) notice of proposed rulemaking and the January 8, 1981 (46 FR 2064) final rule).

**Application to Manual Lap/Shoulder Belts in Passenger Cars**

The January 1981 final rule exempted manual Type 2 safety belts installed in the front seats of passenger cars from the comfort and convenience requirements. This was done to allow manufacturers to devote their resources to automatic restraints in these vehicles since Type 2 manual belts in the front seats would have been phased out when the automatic restraint requirements became effective. However, the subsequent July 1984 (49 FR 28962) final rule mandating automatic restraints specifies that if States representing two-thirds or more of the nation's population enact qualifying mandatory safety belt usage laws before April 1, 1989, the requirement for automatic protection will no longer apply. The April 1985 notice proposed that, in the event that this occurs, the comfort and convenience requirements would be extended to Type 2 manual belts installed in the front seats of passenger cars, effective September 1, 1989.



Two domestic manufacturers objected to the extension of the comfort and convenience requirements to manual Type 2 safety belts in front outboard seating positions of passenger cars until a decision has been made in 1989 regarding the future of automatic restraints. They stated that there is no justification for setting such a requirement now, which could cause manufacturers to incur design and tooling costs, because manual belts could be phased out in 1989 if an insufficient number of States pass qualifying mandatory safety belt use laws.

The September 1, 1989 effective date provides a leadtime of four years to comply with the comfort and convenience requirements for Type 2 front seat manual belts in passenger cars. The agency is therefore adopting the proposed September 1, 1989 effective date for Type 2 front seat manual belts in passenger cars if the automatic restraint requirement is rescinded.

The agency recognizes that the possibility exists that the industry will have to discontinue manual belts after 1989 if the automatic restraint requirement for all cars becomes effective. However, the agency believes that comfort and convenience technology developed for automatic belts and for Type 2 manual belts in light trucks and multipurpose passenger vehicles (MPV's) should be transferable to passenger cars with a minimum of design and tooling cost with a four-year leadtime. The agency notes that a large number of passenger cars will have been manufactured with manual belts between 1986 and 1989, and the agency believes it is desirable, from a safety standpoint, to have the front outboard seating positions of these cars incorporate comfort and convenience features which will contribute to increased belt usage. The agency therefore encourages manufacturers to begin voluntarily incorporating comfort and convenience features in their Type 2 front seat manual belts. Since the technology is available, the cost to incorporate these features should be minimal, especially if they are made part of the design process for newly introduced vehicles.

#### Emergency Locking Retractors (ELR) and Child Restraints

Paragraph S7.1.1.3 of Standard No. 208 was amended in the January 1981, final rule to specify that certain lap belts installed at front outboard seating positions are required to have an emergency-locking retractor rather than an automatic locking retractor (which was previously allowed as an option).

Some manufacturers also incorporate emergency-locking retractors in rear seats as well. Automatic locking retractors are inconvenient to use since they must be extended in a single continuous movement to a length sufficient to allow buckling or they will lock. They also tend to tighten excessively under normal driving conditions, sometimes making it necessary to unbuckle and refasten the lap belt to relieve pressure on the pelvis and abdomen. Neither of these problems exists with the emergency-locking retractor, which allows occupant movement without tightening and which locks only upon rapid occupant movement, vehicle deceleration or impact.

The April 12, 1985 notice proposed a revised version of this requirement. The proposed revision reflected the agency's tentative judgment that use of child restraints in the front outboard passenger position with a lap belt equipped with an emergency-locking retractor could result in the child restraint moving forward during normal, low-speed driving and braking, or pre-crash vehicle maneuvering or braking. (At higher speeds or upon impact, the locking mechanism in existing belt designs would work to restrain the child seat appropriately.) Therefore, the agency proposed that Type 1 safety belts or the lap belt portion of Type 2 belts with emergency-locking retractors, used in any designated seating position other than the driver's position, be equipped with a locking means to prevent forward motion of child restraint devices.

A majority of vehicle manufacturers objected to this proposal. The main arguments they raised were: (1) The locking means could degrade the performance of the belt system for adult passengers; (2) the proposed language would exclude alternative designs, such as owner-installed "locking clips," which could serve the same purpose; (3) the requirement would not be cost effective, because not all vehicle owners need a locking means to secure a child restraint system in the front seat; and (4) the proposed effective date for the requirement, September 1, 1986, does not provide sufficient design and development time for compliance. They also argued that, if this requirement is maintained, it should be delayed until the agency decides whether it will require dynamic testing of manual safety belts.

Two manufacturers of child restraint devices and a child passenger safety association supported the proposed amendment. They stated that the

approach cited in the proposal would solve potential problems relating to child seats and ELR's, and would eliminate the need to devise what they termed makeshift solutions.

Child restraint manufacturers stated that some restraint devices, when positioned by safety belt systems which are adjusted by ELR's, become unstable when occupied by very active children. Agency testing of child restraint devices under conditions of low-speed braking and vehicle maneuvers indicates that, although improvements in belt systems could improve the stability of these devices, there are no data to show that low-speed movement of child safety seats is affecting the safety performance of child restraint devices in motor vehicle accidents. (Docket 80-18-CR-004).

Because the agency's research did not show that low-speed movement of the seats is actually reducing the effectiveness of child restraints in accidents, and because after-market locking devices are available which achieve the same goal, it has decided not to adopt a manual locking requirement for ELR's at this time. The agency will continue to monitor the potential problems associated with the restraint of child restraint devices by ELR safety belt systems and consider whether to address these problems in future rulemaking actions.

#### Additional ELR Issues

Regarding S7.1.1.3, one manufacturer asked NHTSA to clarify whether an ELR located at the point of shoulder belt retraction on a Type 2 belt system, which combines the lap and torso belt in a continuous running loop, complies with the requirement. NHTSA confirms that a Type 2 continuous belt system, which incorporates an ELR to control slack in the lap and torso belt portions, would comply with the requirement.

Another manufacturer asked for clarification on the use of lap belts in passenger cars equipped with air bags versus those equipped with single automatic diagonal belts. The requirement of S7.1.1.3 only applies to lap belts installed in a vehicle to comply with Standard No. 208. Thus, a lap belt installed in conjunction with an air bag, in order to meet the lateral and rollover requirements of S4.1.1.2(c)(2), would be required to have an emergency locking retractor. However, a Type 1 lap belt voluntarily installed by a manufacturer in conjunction with a single diagonal automatic belt would not have to comply with the provisions of S7.1.1.3, since the single diagonal automatic belt



would fully meet the belt requirements of the standard by itself.

#### Open-Body Vehicles, MPV's, and ELR's

One manufacturer stated that open-body vehicles should be exempted from the ELR requirement of S7.1.1.3, because these vehicles are designed to perform numerous off-road, heavy-duty tasks, and both the lap and upper torso portions of the belt system are subjected to design criteria far different from typical passenger car belt systems. In particular, occupants may want the belts tightly fastened around them when the vehicle is used on rough terrain. The agency agrees that open-body vehicles do perform numerous off-road, heavy-duty tasks, but they are also commonly used in normal highway driving to perform the same functions as passenger cars, where tight belts may discourage belt use. Furthermore, belt systems are available for open-body vehicles as well as passenger cars, which can function as ELR's for the lap belt or lap belt portion of a combined lap and shoulder belt, and still be capable of being manually or automatically locked by occupants when they want the belt to be tightly fastened around them. These systems can also provide tension relieving and ELR functions for the torso portion of a Type 2 belt system.

Incorporating a single retractor, which can function as either an ALR or an ELR, into a lap belt or the lap belt portion of a Type 2 belt for off-road use, would accommodate the desire of occupants to be tightly restrained when needed and would also provide a more comfortable belt when this is sufficient for normal operation of the vehicle. Such an ALR/ELR feature may be desirable in some vehicles and is currently available in some imported and sports cars. The agency estimates the cost to range from \$1.00 to \$5.00 per seating position. Alternatively, a locking D-ring in the lap belt, which enables users to snugly fasten the lap belt, could be provided for virtually no increase in cost to the consumer. For these reasons, the agency is not exempting open-body vehicles from the requirement of S7.1.1.3.

Another manufacturer requested an exemption from the requirements of S7.1.1.3 for all multipurpose passenger vehicles stating, with no supporting rationale, that the ELR requirement is design restrictive. The agency does not believe that the ELR requirement is design restrictive for the reasons discussed above. In addition, multipurpose passenger vehicles provide the same functions as passenger cars. While some types may also be designed for heavy duty, off-road use, the same rationale set out in the discussion of

open-body vehicles applies to other multipurpose passenger vehicles. The agency concludes that multipurpose passenger vehicles should continue to be subject to the requirement of S7.1.1.3.

#### Corrections

Two technical corrections are made in this final rule relating to paragraph S7.1.1.3. As proposed in the April 12, 1985 notice, paragraph S7.1.1.3(b) exempts manual type 2 safety belts installed in the front outboard seating position of passenger cars. That exemption was inadvertently omitted from paragraph S7.4(b), which specifies requirements for passenger cars after September 1, 1988. Clarifying language is added to paragraph S7.4(b) in this final rule.

The second technical change clarifies the agency's intent to require passenger cars, manufactured on or after September 1, 1989, to have ELR's for the lap belts or the lap portion of lap/shoulder belts used in the front outboard seating positions, if the automatic restraint requirement is rescinded. Paragraph S7.1.1.3(b) is revised to include the September 1, 1989 effective date for manual Type 2 belts in the front outboard seats of passenger cars.

#### Convenience Hooks for Automatic Belts

Some automatic belt design plans include a manual "convenience hook" which enables occupants manually to stow the belt webbing totally out of the way as they are about to exit the vehicle. Paragraph S7.4.1 was included in the January 1981 final rule to ensure that such convenience hooks would not affect compliance with the automatic restraint requirements. Automatic belts installed for compliance with the injury criteria of FMVSS 208 must operate without requiring any manual procedures by the vehicle occupant. Thus, manual hooks could not be a necessary component to move or hold the belt webbing out of the occupant's way since this would defeat the automatic aspect of performance. Paragraph S7.4.1 currently provides that any such hook must automatically release the belt webbing prior to the car being driven.

In response to comments in one petition for reconsideration of the 1981 final rule, the April 1985 proposal contained revised language to make it clear that convenience hooks are intended to release the webbing only when the automatic belt is otherwise operational. One commenter objected to the revision, stating that it would not promote the use of detachable automatic belts which have been disconnected. These objections appear to be based on

a misunderstanding of the function of the convenience hook. The convenience hook concept was developed to allow it to be used in conjunction with automatic belt systems which would be in the automatic operational mode. In this way, the convenience hook could promote the use of detachable or nondetachable automatic belts, because the hook would facilitate entering or exiting the vehicle by the front seat occupants, who would then be less prone to detach or mutilate the belt system.

The commenter apparently believed that the "stowage hook," which is used to stow the latch plate of a disconnected, detachable belt, should also be covered by the requirement of S7.4.1. The stowage hook is not a convenience hook; nor is it subject to the provisions of S7.4.1. The commenter's suggestion that the "stowage hook" also release a disconnected detachable belt automatically could, in theory, increase usage, but it might also encourage owners to damage the belt physically or remove it, thus making it unavailable to subsequent owners and vehicle users. In the case of a disconnected automatic belt, the warning system would indicate to the vehicle occupants that the belt is disconnected and remind them to reconnect the belt. For these reasons, the agency denies the suggestion for automatic release or stowage hooks.

#### Webbing Tension-Relieving Devices

Some safety belt designs include devices intended to relieve shoulder belt pressure. These "window-shade" mechanisms or other tension-relieving devices increase the comfort of the belt, but may reduce the effectiveness of belts in a crash situation if they are misused so as to introduce excessive slack in the belt webbing. The January 1981 final rule specified that any such tension-relieving devices may be used on automatic belt systems only if the system would comply with the injury criteria of the standard with the device adjusted to *any possible position*. (The notice of proposed rulemaking preceding that final rule would have banned tension-relieving devices outright.) The 1981 final rule was adopted in recognition of the fact that tension-relieving devices can improve belt fit and increase belt comfort in certain circumstances, and was intended to allow manufacturers somewhat wider latitude in designing automatic belts, but, as discussed below, would probably have had the effect of banning these devices.



Several manufacturers objected to the wording of the January 1981 final rule on the basis that the belt system would have to meet the injury criteria even when the device had been misused to produce excessive slack in order, essentially, to defeat the system, even if such a usage was not intended by the manufacturer.

In the April 1985 proposal, the agency proposed rewording this provision to require manufacturers to include instructions in their vehicle owner's manual concerning the proper use of any tension-relieving devices incorporated in their automatic belt systems. These instructions must state the maximum amount of slack that can safely be introduced and include a warning to vehicle occupants that if excessive slack is introduced into the system, the protection offered by the belt system would be substantially reduced or even eliminated. The agency will test for compliance with the injury criteria by adjusting the belt within the slack levels recommended by the manufacturer. With one exception, those manufacturers who commented on this proposal supported the revision to allow tension-relieving devices.

However, one domestic manufacturer and a consumer group objected to the provision related to dynamic testing with the tension-relieving device adjusted to the manufacturer's recommended slack position. The manufacturer objected to a dynamic test that would require any slack at all to be introduced into the belt system, on the grounds that uncontrolled variability would be introduced into the dynamic test procedure, which would then lack objectivity. The manufacturer asserted that it might have to eliminate all tension-relieving devices for its safety belts.

The agency's proposed test procedure was intended to accommodate the view that tension-relieving devices increase the comfort of belts while, at the same time, limiting the potential reduction in effectiveness for safety belt systems in which excessive slack is introduced. The agency does not agree that this test procedure would eliminate tension-relieving devices from the marketplace. As mentioned earlier, other manufacturers supported the proposal and did not indicate they would have to remove tension-relieving devices from their belt systems. This commenter did not show that injury levels cannot be controlled within the specified injury criteria by testing at the recommended slack adjustment, as determined by the manufacturer. The recommended slack could be between zero and any level

selected by the manufacturer as appropriate to relieve belt pressure without being unsafe. As a practical matter, most tension-relievers automatically introduce some slack into the belt for all occupants. Testing without such slack would be unrealistic.

The same commenter objected to the requirement that belt slack be cancelled each time the vehicle door is opened and the buckle is released, because this requirement would encourage occupants to disconnect automatic belts. In addition, this commenter stated that the requirement is consistent with non-detachable, automatic belts and requested that the belt slack be required to be cancelled each time the door is opened whether or not the buckle is released. The agency believes this request has merit and has revised the requirement to reflect this change.

The consumer group objected to the proposal for automatic belt systems using tension-relieving devices to meet the injury criteria with only the specified amount of slack recommended in the owner's manual. They stated that most owners would not read the instructions in the owner's manual regarding the proper use of the tension-relieving device. It said an occupant could have a false sense of adequate restraint when wearing an automatic belt system adjusted beyond the recommended limit.

The agency's views on allowing the use of tension relievers in automatic safety belts were detailed in the April 1985 notice. The agency specifically noted the effectiveness of a safety belt system could be compromised if excessive slack were introduced into the belt. However, the agency recognizes that a belt system must be used to be effective at all. Allowing manufacturers to install tension-relieving devices makes it possible for an occupant to introduce a small amount of slack to relieve shoulder belt pressure or to get the belt away from the neck. As a result, safety belt use is promoted. This factor could outweigh any loss in effectiveness due to the introduction of a recommended amount of slack in normal use. This is particularly likely in light of the requirement that the belt system, so adjusted, must meet the injury criteria of Standard No. 203 under 30 mph test conditions. Further, the inadvertent introduction of slack into a belt system, which is beyond that for normal use, is unlikely in most current systems. In addition, even if too much slack is introduced, the occupant should notice that excessive slack is present and a correction is needed, regardless of whether he or she has read the vehicle's owner's manual.

#### Torso Belt Body Contact Force

NHTSA research indicates that a substantial number, approximately 60 percent, of occupants are likely to complain about belt pressure if the torso belt net contact force on an occupant is greater than 0.7 pound (DOT HS-805-597). Therefore, the January 8, 1981, final rule specified that the torso portion of any manual or automatic belt system shall not create a contact pressure exceeding that of a belt with a total net contact force of 0.7 pound. Most of the petitions for reconsideration objected to this requirement, but gave no new reasons which would cause the agency to reverse its prior decision on this issue.

The April 1985 proposal contained a revised S7.4.2 which retained the 0.7-pound contact force requirement and proposed applying the requirement to tension relievers. Several commenters objected to the requirement that automatic belt systems with tension relieving devices must meet the 0.7-pound contact force limit when the tension reliever is deactivated. Both domestic and foreign manufacturers questioned whether imposing this contact force requirement on belt systems with tension relievers would advance safety, because the belt contact force requirement could result in insufficient force to retract webbing reliably in some systems.

The agency has decided to exempt safety belt systems incorporating tension-relieving devices, such as window-shade devices, which can completely relieve belt tension, from the 0.7-pound torso belt contact force requirement. The agency is still concerned that some occupants may introduce belt slack, who otherwise would not, in a belt system incorporating a tension-reliever, if the belt force exceeds 0.7 pound. However, the agency does not want compliance with the body contact force requirement to limit manufacturers' design flexibility in meeting the retraction and other requirements in the rule.

The 0.7-pound contact force limit is retained for belt systems without tension-relieving devices, which have either a constant or variable force. The tension in these belt systems cannot be completely removed, as it can in a belt system incorporating a window-shade or other type of tension-reliever. Therefore, the agency believes it is important to limit belt contact force in those systems to promote belt usage.

One manufacturer requested that the 0.7 pound contact force level be increased to ensure belt retraction.



Another manufacturer stated that occupants of open-body vehicles may prefer to have the secure feeling of the upper torso belt webbing tight against their chests, i.e., a force greater than 0.7 pound. The company asked that open-body vehicles be excluded from the 0.7-pound limit. As previously noted, manufacturers may use an ALR/ELR belt system or other means to allow occupants to have belts with a tight fit. In addition, the agency believes that such an exclusion, or an increase in the 0.7-pound contact force level, is unnecessary with the modification of S7.4.3 to allow tension-relieving devices in lieu of meeting the 0.7-pound force requirement. Both manufacturers will have the option of meeting this requirement by installing tension-relieving device in a belt system with a contact force of more than 0.7 pound.

One commenter stated that the standard should be revised to specify requirements for manual belts with tension-relieving devices. The agency did propose requirements for these manual belts in Notice 38, in conjunction with the dynamic tests for manual belts. If the agency does adopt a dynamic test requirement for manual belts, the provision on tension-relievers for manual belts would be expected to be identical to those for automatic belts.

#### Belt Contact Test Procedures

The April 1985 NPRM proposed that the test dummy be unclothed during the belt contact force test to avoid drag produced by clothing. The agency was concerned that such drag could cause unwanted deviations in the measurement of belt contact force, as specified in S10.6. Three commenters supported the change to remove the dummy clothing for the test. However, two other commenters stated that test variability would be greater with the test dummy's clothes removed based on the variability of skin friction due to changes in test temperature and humidity. They also said that a clothed dummy would more closely represent real world conditions. After consideration of the comments, NHTSA agrees that the clothed dummy would more closely represent real world conditions. The agency has therefore revised the rule to require testing on a clothed test dummy, using the clothing specified in Part 572.

Two commenters asked that the test for belt contact force set maximum limits for belt release speed. The agency believes that adding a belt release speed requirement would add an unnecessary complication to the test without providing any significant improvement in controlling repeatability.

Several commenters correctly pointed out that the proposed text for S7.4.3 should reference the test procedure of S10.6 instead of S10.8. This notice adopts that correction.

#### Latchplate Accessibility

One of the most inconvenient aspects of using many current manual safety belt designs is the difficulty that a seated occupant has in reaching back to grasp the belt latchplate when the belt is unbuckled and in its retracted position. The greater the difficulty in reaching the latchplate to buckle the belt, the more likely the occupant will be discouraged from using the belt.

Paragraph S7.4.4 of the January 1981 final rule specified requirements to define limits on the distances an occupant has to reach for latchplates and to prescribe minimum clearances for arm and hand access. The latter requirement was specified in terms of a test block which must be able to move to the latchplate unhindered. The April 12, 1985 proposal contained a revision in the dimensions of the test block, reducing it from 3x4x12 inches to 2½x4x8 inches.

Two manufacturers requested a test procedure revision which would provide for seat cushion deflection in determining access to a latchplate with the test block shown in Figure 4. One suggestion that force applied to the test block, not to exceed a certain limit, should be used to allow for seat cushion deflection. The other stated that the requirement should be deleted until such time as a test device that simulates the human hand can be developed to address seat cushion deflection.

The agency believes that reducing the size of the test block is simpler than developing an objective method for measuring and limiting seat cushion deflection. The agency also believes that the test block with its new dimensions, which are based on hand length and thickness dimensions referenced by the Society of Automotive Engineers, is sufficiently representative of the human hand. Therefore, the agency is adopting the new test block in the test procedure.

One manufacturer stated that Figure 3 in Standard No. 208, which gives the location of the reach strings for the latchplate accessibility test, does not state whether the view of the dummy is intended to depict the dummy being tested on the left or right side of the vehicle. Therefore, the implication is that the outboard reach string is always located on the right side of the dummy, according to the manufacturer. The view in Figure 3 is meant to depict the dummy being tested on the right side of the vehicle. The agency would use the string

placements in Figure 3 to perform an accessibility test for the right front outboard passenger seating position, because the outboard reach string is located on the right side of the test dummy. This string would be reversed for the driver position, because the outboard side would be located on the left side of the dummy with the dummy facing forward. The string in Figure 3 is labeled "outboard" and the agency believes this explanation is sufficient without changing Figure 3.

Several manufacturers stated that a latchplate accessibility test using the test block representing a human hand to check the clearance between the arm rest and seat cushion should not be necessary, if the belt system is designed so that the latchplate is retained in an accessible area. For example, one manufacturer said that it uses a sliding plastic bar on its belt webbing which positions the latchplate in an accessible area near the upper torso anchorage point. The manufacturer said that the plastic bar prevents the latchplate from sliding down the webbing to a position under the arm rest or between the seat and side of the vehicle. The manufacturer said that it could also use a fixed plastic button to retain the latchplate near the upper torso anchorage. The agency agrees that if a latchplate is permanently retained in an accessible area, reachable by the test block, there is no need to conduct a clearance test between the arm rest and seat cushion.

The purpose of the latchplate accessibility requirement is to address designs in which the latchplate can freely move on the belt webbing. In those cases, the latchplate may initially be located in an accessible area, but the design of the belt may permit the latchplate to slide along the webbing into the area between the seat cushion and the door interior, or below the door arm rest when the belt is retracted. If this situation is likely to occur in normal use with any regularity, such a belt system would be required to comply with the test for accessibility at the point where the latchplate normally slides along the webbing into the area between the seat cushion and the door interior, or below the door arm rest. The agency believes that the addition of language stating that access to the latchplate should be tested with the latchplate in its "normally stowed position" to the requirement should clarify this requirement. If the belt system incorporates a design which ensures that the latchplate cannot move near an arm rest or move down between the seat and the vehicle's side structure,



the system will have no problem passing the hand access test.

Several commenters apparently believed that S7.4.4 requires the latchplate to be mounted on the outboard side of a vehicle seat. They said that the requirement was design-restrictive for a Type 1 safety belt assembly because such an assembly could otherwise be designed so that the latchplate is located at either the inboard or outboard position. The requirement was developed to test for access of the latchplate or buckle on belt assemblies which are located outboard of the designated seating position for which the latchplate is installed. This is because access to a latchplate located in that position can be hindered by the vehicle's side structure. The requirement was not intended to specify that the latchplate or buckle be located outboard of a designated seating position. The language of the rule is therefore revised to indicate that the test applies only to latchplates or buckles located outboard of the designated seating position.

One manufacturer recommended that the compliance test for accessibility be made similar to the requirement for safety belt anchorages in Standard No. 210, *Seat Belt Anchorages*. Compliance arcs would be generated from a point on the SAE two-dimensional manikin, whose H-point is positioned at the full-forward position of the design H-point, or on a full-scale design drawing. This commenter stated that such a procedure would eliminate test variability, reduce the compliance test burden, and allow manufacturers to determine compliance while the vehicle is in the advance design stage.

Manufacturers are free to determine compliance with a requirement by any method they choose, while exercising due care. There is no reason to believe that the procedure suggested by the commenter is not compatible with the procedure defined in Standard No. 208. Therefore, it is unnecessary to revise the current test procedure for latchplate accessibility.

Another manufacturer requested that the language of S7.4.4 be amended to specify that the access requirement be met with the seat within the adjustment range of a person whose dimensions range from those of a 50th percentile six-year old child to those of a 95th percentile adult male. The rationale for the request is that, when securing a child restraint in some of their vehicles, the latchplate is located at a very low height near the floor, after locking. In this situation, the ability of small cars to comply with the latchplate access requirement is severely compromised.

To achieve compliance, the seat back would have to be deeply cut away at the outboard side.

The latchplate access requirement is meant to address access problems when the latchplate is in its normally stowed position. It was not meant to address potential access problems with child restraints that might occur in specific vehicles. Therefore, the agency does not believe an amendment is necessary.

#### Belt Retraction

The April 12, 1985 notice proposed to revise S7.4.5 to allow for the stowage of armrests on vehicle seats, such as captain's chairs, which must have the outboard arm rests stowed before the occupant can exit the vehicle. One commenter asked the agency to permit all armrests, which protrude into the door opening in a manner which encumbers egress, to be placed in their stowed position for the retraction test. The agency believes this comment has merit and has revised S7.4.5 to permit the stowage of outboard armrests if they protrude into the door opening in a manner which encumbers egress. The agency notes that folding armrests are usually designed that way for the purpose of facilitating egress or ingress by moving them out of the way to a stowed position.

The April notice also proposed to allow tension-relieving devices on the safety belts of open-body vehicles without doors to be manually deactivated for the retraction test. One commenter objected to allowing these tension-relieving devices to be manually, rather than automatically, cancelled. The commenter said that there are belt systems currently available which will automatically cancel a tension-relieving device when the latchplate is released from the buckle.

At the time the agency proposed the requirement for open-body vehicles, it was not aware that there were belt systems which would automatically deactivate tension-relieving devices solely through the action of unbuckling the belt. Therefore, the agency only proposed that belt systems in open-body vehicles be tested with their tension-relieving devices manually deactivated. The agency will consider the commenter's suggestion as one for future rulemaking. The agency notes that manufacturers can voluntarily adopt the use of other automatic means for deactivating the tension-relieving device in open-body vehicles.

The April notice also proposed that the latchplate must retract to its "completely stowed position." Two commenters objected to this proposal

saying that determining whether the belt is "completely" stowed is difficult. They believe that, if the stowed position prevents the safety belt from extending out of the vehicle's adjacent open door, the requirement for belt retraction should be satisfied. The agency believes that this comment is reasonable and consistent with the intent of this section to prevent belts from getting dirty as a result of being caught in the door and from hindering ingress or egress of occupants. The language in the rule is revised accordingly.

#### Seat Belt Guides

The April notice proposed clarifications in the language of S7.4.6.1(a) to increase the accessibility of belt buckles and latchplates and belt webbing to the vehicle occupant, while giving manufacturers flexibility to use stiffeners, guide openings, cables, or conduits of any type. The notice also proposed modifying S7.4.6.1(b) to exempt seats which are movable to serve a dual function.

Two commenters stated that the language in S7.4.6.1(b) did not adequately address seats which are removable or seats which are movable to serve a secondary function. NHTSA believes these comments are valid, because a seat belt latchplate, a buckle, or a portion of the webbing cannot be maintained on top of a seat which has been removed or moved to serve a secondary function. Therefore, the requirement does not apply to seats which are removable or movable so that the space formerly occupied by the seat can be used for a secondary function, such as cargo space. However, the term, secondary function, does not include the movement of a seat to provide a comfortable driving and riding position for different size occupants.

Two manufacturers requested that the words "seat cushion" in S7.4.6.1(b) be amended by adding the words "and/or seat backs." The agency specifically excluded "seat backs" from the exemption because there is no evidence that seats with folding seat backs cannot comply with the requirements. Adding movable seat backs to the language in S7.4.6.1(b) could exempt front seats in passenger cars and the second seat in some vehicles, such as station wagons. The agency believes that there is no reason for exempting these seats.

One manufacturer stated that the center safety belt in the rear seat of a motor vehicle should be exempted from the requirement in S7.4.6.1(a) concerning seat guides. This commenter stated that there is little chance of this belt ever



becoming "lost" behind the seat due to the abundance of webbing material available for the center rear safety belt; therefore, a webbing guide seems unnecessary. The agency disagrees. The agency believes that the requirements are necessary since they address specific problems associated with belts which are not adjusted by retractors, such as the rear center seat belts. (Center seats are not required to have safety belt retractors, which automatically stow the webbing after the belt is taken off. Instead, they usually have more of the webbing lying on the seat cushion and have a manually adjustable buckle which slides along the webbing so that an occupant can tighten the belt around himself or herself.) Having more of the belt lying on the seat can make the belt more accessible; it can also cause the user to stuff the belt behind the seat cushion to get the webbing out of the way when the center seating position is not being used. In addition, one company, such as the commenter, may provide ample webbing which will lie on the seat cushion, while another company may not. The agency is therefore not exempting center seats.

One manufacturer stated that a 3-point belt assembly, with the lap webbing portion designed to pass between the seat cushion and seat back, will not necessarily have the latchplate positioned on the top of the seat, when the webbing is retracted. It urged that the requirement be revised to read, "maintain the accessibility of the safety belt latchplate or buckle," and to strike the words "or a portion of the safety belt webbing on top of the seat cushion." The agency agrees that the latchplate and buckle do not necessarily have to be located on the seat cushion to be accessible. NHTSA does believe that as long as the webbing is accessible on top of or above the seat, an occupant should be able to retrieve the latchplate and buckle. Therefore, the rule is revised to require that only one of the three belt parts (the seat belt latchplate, the buckle, or seat belt webbing) be maintained on top of or above the seat cushion under normal conditions. Although the other two parts will not be required to be on the seat cushion, the agency has revised the rule to require that they remain accessible under normal conditions.

Another manufacturer stated that the provision that a buckle be accessible in S7.4.6.2 with an adjustable armrest in any position of adjustment lacked objectivity and should be deleted. The agency does not agree and continues to believe that a simple visual inspection should be sufficient to determine

whether or not the buckle is accessible when the arm rest is in the down position.

#### Warning System Requirements

The purpose of the proposed revision to these requirements in the April notice was to allow for a warning light which activates for at least 60 seconds if condition (A)—the vehicle's ignition switch is moved to the "on" or "start" position, exists simultaneously with condition (B)—the driver's automatic belt is not in use or, if the belt is non-detachable, the emergency release mechanism is in the released position. Specifying a minimum activation time was intended to allow the manufacturer the option of providing for additional warning time. The proposal would also require that condition (C)—the belt webbing of a motorized automatic belt is not in its locked, protective mode at the anchorage point—be indicated only by a continuous or flashing warning light in lieu of a buzzer each time the ignition switch is turned to the "on" position. The light would remain lit as long as condition (C) existed.

Two manufacturers raised concerns about determining when condition (B) exists—the driver belt is not in use or the emergency release mechanism is released—in a motorized belt system. They, in effect, made the point that with certain motorized designs, the April proposal would have required the audible warning required for condition (B) to sound while the belt webbing is moving along its track to its fully locked position. For example, one manufacturer stated that in some motorized belt systems the emergency release belt latch mechanism sensing is done by a proximity switch in the B pillar which senses the presence of a magnet in the part attached to the webbing. In this case, the system will sense that the latch is unfastened until the motorized belt is in its fully locked position and, thus, under the proposal, would activate the audible warning during the period that the belt is in motion. This commenter requested that to prevent an audible warning from being given when the mechanism is being operated normally, the manufacturer should be given the option of starting the audible warning period from the time that the belt reaches the fully locked position.

The agency believes that it is important that an audible warning sound when the driver's belt is not in use or the belt's emergency release mechanism is actuated. However, to prevent the sounding of the audible warning when a motorized belt is moving into place, the agency is revising the warning system requirement. The

revision provides that, in the case of a motorized belt, the existence of condition (B) is determined once the belt is in its fully locked position. Once a motorized belt has reached its fully locked position, an audible warning must sound if condition (B) exists. The agency wishes to emphasize that all motorized belts, regardless of their design, should have an audible warning that sounds if the driver's belt is not in use or the belt's emergency release mechanism is actuated.

One of the same commenters also said it is planning to use detachable automatic belts in some of its new belt system designs. Its concern is that condition (B), which is determined by the belt latch mechanism not being fastened, would require them to locate the electrical sensor in the emergency release buckle. In a motorized system, the wire harness for the electric sensor would have to be moved along a track, because the "emergency release buckle" slides along the track with the buckle end. The location of the electrical sensor in the buckle makes the wire harness less reliable, because of the constant movement, according to the commenter. After the close of the comment period on the April notice, NHTSA received a petition for rulemaking to amend the requirements of paragraph S4.5.3.3(b) of Standard No. 208 from Chrysler Corporation which raised the same issues. Chrysler petitioned for an alternative means to determine when the belt latch mechanism is not fastened. It asked that the warning requirement be modified to permit actuation of the warning when less than 20 inches of webbing has been withdrawn from the driver's seat belt retractor.

The agency believes the problems identified by the commenter and the Chrysler petition are valid. NHTSA did not intend to imply in the April 1985 notice that the method for determining that the belt latch is not fastened must be by a sensor located in the belt buckle. The agency believes that manufacturers should have maximum design flexibility to develop systems to determine if the latch is not fastened. The condition could be determined by any means, such as a predetermined amount of belt webbing spool-out, or the location of a sensor in the overhead, motorized track area or in the working mechanism of the buckle/latchplate, which would show that the automatic belt is not fastened. The agency does note that if a manufacturer decides to use belt webbing spool-out that it determine the least amount of webbing necessary to go around a person in the



driver's position with the seat in its rearmost position. If less than this minimum amount of webbing spools out of the retractor in an attempt to defeat the system, the warning should be activated.

Two manufacturers requested that NHTSA confirm that the same light signal may be activated under both conditions (B) and (C), since the required audible signal suffices to differentiate between the two conditions. The agency agrees that this comment has merit and confirms that the same light signal may be activated under both conditions (B) and (C).

#### Use of Additional Warnings

One manufacturer sought permission to use additional warnings to supplement those required by the standard. This manufacturer stated that its warning system provided for an audible warning system in addition to the warning light to indicate that condition (A) + (C) exists. Further, the passenger seating position is also equipped with a warning system, which is not required by the standard. The agency notes, again, that a manufacturer is free to provide features in addition to those required by the standard, as long as the standard's requirements are met. No change in the standard is necessary to permit the commenter to install additional features in its warning systems.

Another company stated that, for non-detachable automatic belts, the proposed 60-second visual warning and the 4- to 8-second audible warning may not be sufficient to indicate that the emergency spool release is in the released position. This company believes that the visual warning should remain on for as long as the emergency release mechanism remains in the release or "emergency" position. The agency notes that the requirement specifies a minimum 60-second visual warning and does not limit it to 60 seconds for condition (B). The agency specified a minimum period of time, which is believed sufficient to warn occupants of this condition. Manufacturers have the choice of extending the time for a warning light to more than 60 seconds to indicate that the emergency release mechanism is in the release or emergency condition. Therefore, no change in the language of the standard is required.

#### Walk-in Van Vehicles

The agency tentatively proposed to exclude walk-in step vans from the safety belt comfort and convenience requirements in the April 12, 1985 notice. By the term, "walk-in vans," NHTSA is

referring to city delivery type vehicles used, for example, to deliver parcels or dry cleaning where the drivers can walk directly into the vans without stooping. A consumer group objected to the proposed exemption for walk-in step vans on the basis that NHTSA should promote belt use in these vehicles by making them easier to use. The agency is not persuaded that the increase in belt usage which might result from the redesign of walk-in vans to meet the comfort and convenience requirements would justify the cost of such a modification. Moreover, these vehicles do not normally have a secondary use, for example, as a family vehicle, as do other utility vehicles which are required to meet the comfort and convenience requirements for safety belts. Due to the problems with cost and vehicle redesign, the agency does not believe that it is appropriate to apply the comfort and convenience requirements to these vehicles.

#### Weights and Dimensions

In the April 12, 1985 notice, the agency proposed a chart of weights and dimensions which included small dimension changes and tolerances for the 50th percentile adult male. One manufacturer commented that the agency has supplied no rationale for these changes and that such dimensional revisions to the Part 572 dummy should be the subject of a separate rulemaking under Part 572. This commenter also objected to inclusion of a seated hip circumference in the chart. The agency notes that the chart of weights and dimensions of vehicle occupants was included in Standard No. 208 as a guide for manufacturers. The seated hip circumference was included in this chart because it is referred to in Standard No. 208. There is no requirement in Part 572 for a seated hip circumference; therefore, this dimension is not a requirement for the Part 572 test dummy. The agency proposed the minor changes to the chart to ensure that the dimensions set forth in the chart agreed with the dimensions specified on drawing SA 150 M002 of the test dummy, which is incorporated by reference in Part 572.5. The agency is therefore, adopting the proposed changes.

Another company said that the dimensions of a six-year-old child are contained in the table defining the vehicle occupants. Although it highly recommends safety belt use for a child of this age, this commenter stressed that optimum protection for a person of these dimensions can only be obtained by using an additional special booster cushion equipped with a safety belt guide system. These types of cushions

are readily available in the United States. The commenter therefore requested that the standard be amended to permit the commenter to recommend the use of such a cushion in order to ensure correct positioning of the belt around a six-year old child. The agency agrees that, in some instances, booster seats do facilitate the use of adult restraints by this size occupant. However, the agency also believes that the average six year-old child should be suitably accommodated by the adult belt system in such a way that the child is adequately protected from injury and fatality. Therefore, the agency declines to make this change to the standard.

#### Automatic Safety Belt Interpretation

In 1974 (39 FR 14594), the agency issued an interpretation that it would not consider a belt system which had to be manually moved out of the way by the occupant to be an "automatic" system that would satisfy the requirements of Standard No. 208. In the April 12, 1985 notice, the agency stated its belief that such an interpretation may be overly stringent and requested public comment.

Four commenters argued that the past interpretation was overly stringent, because it would have allowed no manual movement of the belt to accommodate ingress into the vehicle. As a minimum, these commenters stated, such an interpretation should acknowledge that a safety belt design should be considered "passive" or "automatic" if an occupant would normally push the webbing aside upon entering the vehicle. In addition, an automatic belt requiring a slight adjustment for comfort should be considered an automatic restraint system. The commenters urged that any belt design, which would perform its protective restraining function after a normal process of ingress, without separate deliberate action by the vehicle occupant to deploy the restraint systems, should be allowed. Finally, the commenters said that to provide an automatic lap and shoulder belt design which would comply with the original interpretation could increase the tendency for the occupant to submarine under the belt. The reason is that the lap belt portion, which would enable an occupant to enter or exit the vehicle without manually moving the belt, could be raised too high. To solve this problem, a very expensive motorized system would be required to move the belts out of the occupant's ingress/egress area.

The agency believes these comments have merit and has revised its



interpretation. The concept of an occupant protection system which requires "no action by vehicle occupants," as that term is used in Standard No. 208, is intended to designate a system which will perform its protective restraining function after a normal process of ingress or egress without separate deliberate actions by the vehicle occupant to deploy the restraint system. Thus, the agency considers an occupant protective system to be automatic if an occupant has to take no action to deploy the system but would normally slightly push the safety belt webbing aside when entering or exiting the vehicle or would normally make a slight adjustment in the webbing for comfort. The agency believes that the marketplace will help curb use of automatic belt systems which are complicated, or require excessive adjustments before ingress or egress, since prospective purchasers would reject vehicles with such systems. The agency believes that adoption of the comfort and convenience requirements will help ensure that manufacturers provide automatic belt systems which will promote belt usage.

#### Regulatory Impact

NHTSA has considered the economic and other impacts of this final rule and determined that the rule is not a major rule within the meaning of Executive Order 12291. The agency has further determined that the final rule is not significant within the meaning of the Department of Transportation's regulatory policies and procedures.

A final regulatory evaluation has been prepared, which updates the evaluation of the January 8, 1981 final rule, and takes into account the amendments in this final rule. The current evaluation also discusses and estimates the costs and benefits of these amendments. Since many vehicles currently comply with most of these requirements, the incremental costs are not anticipated to be significant. Copies of the evaluation can be obtained by writing to NHTSA's Docket Section at the address given at the beginning of this notice.

The agency has also analyzed this final rule for purposes of the National Environmental Policy Act and has determined that it will not have a significant effect on the human environment. Furthermore, the agency has reviewed the effects of this final rule on small entities under the Regulatory Flexibility Act. Based on this evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. The final rule will not significantly affect the manufacturing process of any safety belt

manufacturers who are small entities or the retail price of vehicles purchased by any small organizations or governmental units. In accordance with this evaluation, no regulatory flexibility analysis has been prepared.

#### Paperwork Reduction Act

The required instructions in the vehicle owner's manual concerning the proper use of any tension-relieving devices incorporated in an automatic belt system in this rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through December 31, 1986 (OMB approval number 2127-0541).

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

#### PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.208, would be amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

#### § 571.208 [Amended]

2. S7.1.1.3 is revised to read:

S7.1.1.3(a) Except as provided in S7.1.1.3(b), a Type 1 lap belt or the lap belt portion of any Type 2 belt installed at any front outboard designated seating position for compliance with this standard in a vehicle (other than walk-in van-type vehicles) manufactured on or after September 1, 1986, shall meet the requirements of S7.1 by means of an emergency-locking retractor that conforms to Standard No. 209 (§ 571.209).

(b) The requirements of S7.1.1.3(a) do not apply to the lap belt portion of any Type 2 belt installed in a passenger car manufactured before September 1, 1989, or the walk-in van-type vehicles.

3. S7.4 is revised to read:

S7.4 *Seat belt comfort and convenience.* (a) Automatic seat belts installed in any vehicle, other than walk-in van-type vehicles, with a GVWR of 10,000 pounds or less, manufactured on or after September 1, 1986, shall meet the requirements of S7.4.1, S7.4.2, and S7.4.3.

(b) Except as provided in S7.4(c), manual seat belts, other than manual

Type 2 belt systems installed in the front outboard seating position in passenger cars, installed for compliance with this standard in any vehicle which has a GVWR of 10,000 pounds or less, and is manufactured on or after September 1, 1986, shall meet the requirements of S7.4.3, S7.4.4, S7.4.5, and S7.4.6. Manual Type 2 seat belts in the front outboard seating positions of passenger cars manufactured on or after September 1, 1989, shall meet the requirements of S7.1.1.3(a), S7.4.3, S7.4.4, S7.4.5, and S7.4.6, if the automatic restraint requirements are rescinded pursuant to S4.1.5.

(c) The requirements of S7.4(b) do not apply to manual belts installed in walk-in van-type vehicles.

4. S7.4.1 is revised to read:

S7.4.1 *Convenience hooks.* Any manual convenience hook or other device that is provided to stow seat belt webbing to facilitate entering or exiting the vehicle shall automatically release the webbing when the automatic belt system is otherwise operational and shall remain in the released mode for as long as (a) exists simultaneously with (b), or, at the manufacturer's option, for as long as (a) exists simultaneously with (c)—

(a) The vehicle ignition switch is moved to the "on" or "start" position;

(b) The vehicle's drive train is engaged;

(c) The vehicle's parking brake is in the released mode (nonengaged).

5. S7.4.2 is revised to read:

S7.4.2 *Webbing tension-relieving device.* Each automatic seat belt assembly that includes either manual or automatic devices that permit the introduction of slack in the webbing of the shoulder belt (e.g., "comfort clips" or "window-shade" devices) shall comply with the occupant crash protection requirements of S5 of this standard with the belt webbing adjusted to introduce the maximum amount of slack that is recommended by the vehicle manufacturer in the vehicle owner's manual to be introduced into the shoulder belt under normal use conditions. The vehicle owner's manual shall explain how the device works and shall specify the maximum amount of slack (in inches) which is recommended by the vehicle manufacturer in the owner's manual to be introduced into the shoulder belt under normal use conditions. These instructions shall also warn that introducing slack beyond the specified amount could significantly reduce the effectiveness of the belt in a crash. Any belt slack that can be introduced into the belt system by means of any tension-relieving device or



design shall be cancelled each time the safety belt is unbuckled or the adjacent vehicle door is opened except for belt systems in open-body vehicles with no doors.

6. S7.4.3 is revised to read as follows:

**S7.4.3 Belt Contact Force.** Except for seat belt assemblies which incorporate a webbing tension-relieving device that complies with S7.4.2, the upper torso webbing of any seat belt assembly, when tested in accordance with S10.6, shall not exert more than 0.7 pounds of contact force when measured normal to and one inch from the chest of an anthropomorphic test dummy, positioned in accordance with S10 in the seating position for which that assembly is provided, at the point where the centerline of the torso belt crosses the midsagittal line on the dummy's chest.

7. The first sentence of S7.4.4 is revised to read as follows:

**S7.4.4 Latchplate Access.** Any seat belt assembly latchplate which is located outboard of a front outboard seating position in accordance with S4.1.2, shall also be located within the outboard reach envelope of either the outboard arm or the inboard arm described in S10.5 and Figure 3 of this standard, when the latchplate is in its normal stowed position. There shall be sufficient clearance between the vehicle seat and the side of the vehicle interior to allow the test block defined in Figure 4 unhindered transit to the latchplate or buckle.

8. S7.4.5 is revised to read as follows:

**S7.4.5 Retraction.** When tested under the conditions of S8.1.2 and S8.1.3, with the anthropomorphic test dummies whose arms have been removed and which are positioned in accordance with S10 and restrained by the belt systems for those positions, the torso and lap belt webbing of any of those seat belt systems shall automatically retract when the adjacent vehicle door is in the open position, or when the seat belt latchplate is released, to a stowed position. That position shall prevent any part of the webbing or hardware from

being pinched when the adjacent vehicle door is closed. A belt system with a tension-relieving device in an open-bodied vehicle with no doors shall fully retract when the tension-relief device is manually deactivated. For the purpose of the retraction requirement, outboard armrests may be placed in their stowed positions if they are on vehicle seats which must have the armrests in the stowed position to allow an occupant to exit the vehicle.

9. S7.4.6.1 is revised to read as follows:

**S7.4.6.1(a)** Any manual seat belt assembly whose webbing is designed to pass through the seat cushion or between the seat cushion and seat back shall be designed to maintain one of the following three seat belt and parts (the seat belt latchplate, the buckle, or the seat belt webbing) on top of or above the seat cushion under normal conditions (i.e., conditions other than when belt hardware is intentionally pushed behind the seat by a vehicle occupant). In addition, the remaining two seat belt parts must be accessible under normal conditions.

(b) The requirements of S7.4.6.1(a) do not apply to: (1) seats whose seat cushions are movable so that the seat back serves a function other than seating, (2) seats which are removable, or (3) seats which are movable so that the space formerly occupied by the seat can be used for a secondary function.

10. S4.5.3.3(b) is revised to read as follows:

**S4.5.3.3(b)** In place of a warning system that conforms to S7.3 of this standard, be equipped with the following warning system: At the left front designated seating position (driver's position), a warning system that activates a continuous or intermittent audible signal for a period of not less than 4 seconds and not more than 8 seconds and that activates a continuous or flashing warning light visible to the driver for not less than 60 seconds (beginning when the vehicle

ignition switch is moved to the "on" or the "start" position) when condition (A) exists simultaneously with condition (B), and that activates a continuous or flashing warning light, visible to the driver, displaying the identifying symbol for the set belt telltale shown in Table 2 of Standard No. 101 (49 CFR 571.101), or, at the option of the manufacturer if permitted by Standard No. 101, displaying the words "Fasten Seat Belts" or "Fasten Belts," for as long as condition (A) exists simultaneously with condition (C).

(A) The vehicle's ignition switch is moved to the "on" position or to the "start" position.

(B) The driver's automatic belt is not in use, as determined by the belt latch mechanism not being fastened, or, if the the automatic belt is non-detachable, by the emergency releases mechanism being in the released position. In the case of motorized automatic belts, the determination of use shall be made once the belt webbing is in its locked protective mode at the anchorage point.

(C) The belt webbing of a motorized automatic belt system is not in its locked, protective mode at the anchorage point.

11. The first sentence of S10.5 is amended to delete "S7.4.7" and to insert in its place "S7.4.4."

12. S10.6 is amended to read as follows:

**S10.6** To determine compliance with S7.4.3 of this standard, position the anthropomorphic test dummy in the vehicle in accordance with S8.1.11, and under the conditions of S8.1.2, S8.1.3, and S8.1.9. Close the vehicle's adjacent door, pull 12 inches of belt webbing from the retractor and then release it, allowing the belt webbing to return to the dummy's chest. Pull the belt webbing three inches from the dummy's chest and release until the webbing is within one inch of the dummy's chest and measure belt pressure.

13. Figure 4 of this standard is modified as follows:



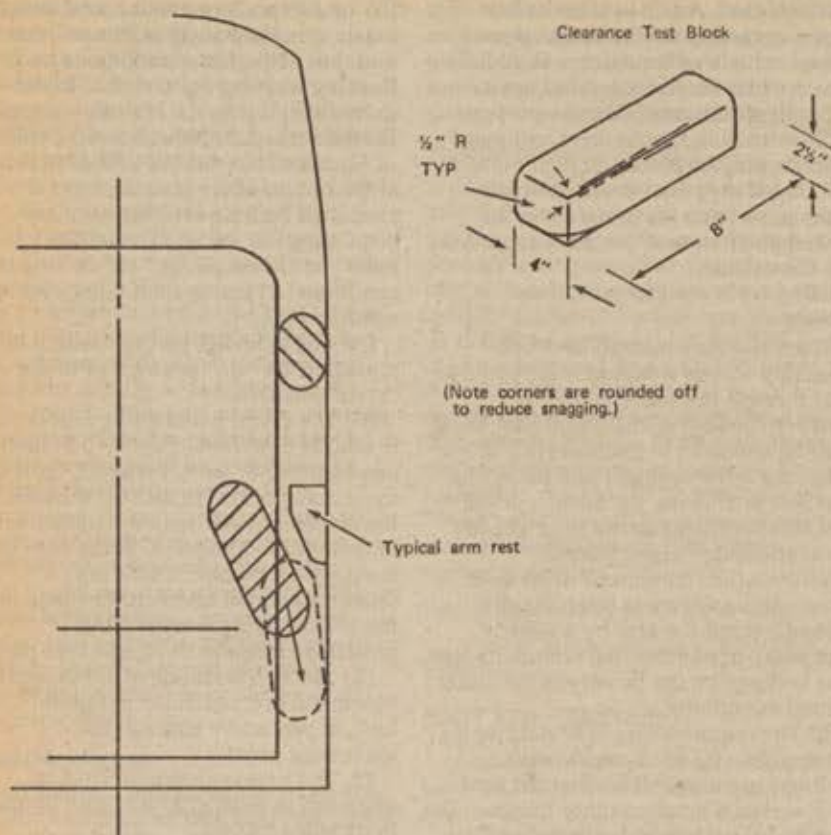


Figure 4—USE OF CLEARANCE TEST BLOCK TO DETERMINE HAND/ARM ACCESS

14. The weights and dimensions of the vehicle occupants referred to in this

standard and specified in S7.1.13 are modified to read as follows:

	50th-percentile 6 year-old child	5th-percentile adult female	50th-percentile adult male	95th-percentile adult male
Weight	47.3 pounds	102 pounds	164 pounds $\pm 5$	215 pounds
Erect sitting height	25.4 inches	30.9 inches	35.7 inches $\pm 1.0$	38 inches
Hip breadth (sitting)	8.4 inches	12.8 inches	14.7 inches $\pm .7$	16.5 inches
Hip circumference (sitting)	23.9 inches	36.4 inches	42 inches $\pm .60$	47.2 inches
Waist circumference (sitting)	20.8 inches	23.6 inches	32 inches $\pm .60$	42.5 inches
Chest depth		7.5 inches	9.3 inches $\pm .20$	10.5 inches
Chest circumference:				
(nipple)		30.5 inches		
(upper)		29.8 inches	37.4 inches $\pm .6$	44.5 inches
(lower)		26.6 inches		

15. The Note following paragraph S11.8 is revised to read as follows:

**Note:**—The concept of an occupant protection system which requires "no action by vehicle occupants," as that term is used in Standard No. 208, is intended to designate a system which will perform its protective restraining function after a normal process of ingress or egress without separate deliberate

actions by the vehicle occupant to deploy the restraint system. Thus, the agency considers an occupant protection system to be automatic if an occupant has to take no action to deploy the system but would normally slightly push the seat belt webbing aside when entering or exiting the vehicle or would normally make a slight adjustment in the webbing for comfort.

Issued on: November 1, 1985.

Diane K. Steed,  
Administrator.

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BILLING CODE 4910-59-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1144

[Ex Parte No. 445 (Sub-No. 1)]

### Intramodal Rail Competition

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission adopts, with modifications, the proposals by the Association of American Railroads, the National Industrial Transportation League, and the Chemical Manufacturers Association for rules to govern the handling of the following competitive access issues: Cancellation of through routes and joint rates, and prescription of through routes, through rates, and reciprocal switching. The rules are set forth in the appendix.

**DATES:** The rules are effective on December 6, 1985.

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gitomer, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

### List of Subjects in 49 CFR Part 1144

Intramodal competition, Competitive access, Railroads.

Decided October 29, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioners Lamboley and Strenio commented with a separate expressions. James H. Bayne, Secretary.

### Appendix

Chapter X of title 49 of the Code of Federal Regulations is amended by adding Part 1144 to read as follows:

### PART 1144—INTRAMODAL RAIL COMPETITION

Sec.

1144.1 Notification, explanation, and justification.



- Sec.  
 1144.2. Negotiation.  
 1144.3. Suspension.  
 1144.4. Investigation of proposed cancellations.  
 1144.5. Prescription.  
 1144.6. General.

Authority: 49 U.S.C. 10321, 10703, 10705, 10707 and 11103; and 5 U.S.C. 553.

**§ 1144.1 Notification, explanation, and justification.**

(a) *Notification.* A rail carrier proposing to cancel a through route and/or a joint rate shall comply with the requirements of 49 U.S.C. 10762(c)(3) and 10705a(f), as appropriate, and 49 CFR Part 1312, and shall give notice of its intent to make such a cancellation 45 days prior to the effective date of the cancellation. For cancellations under 49 U.S.C. 10765(e), the 45-day period must consist of at least a 25-day notice of intent to file followed by a 20-day tariff filing in compliance with 49 U.S.C. 10762(c)(3).

(b) *Explanation and justification.*—(1) *Request.* After a rail carrier has given notice of a proposed cancellation, any affected party may ask the canceling rail carrier to: (i) Explain how the proposed cancellation will affect the party, and (ii) justify the application of the cancellation to a route or rate actively used by or participated in by the party.

(2) *Reply.* The rail carrier proposing the cancellation must give the party the requested explanation and justification, including pertinent mileage and cost data, within 10 days of the date the request is made.

(3) *Time.* By mutual agreement, the rail carrier proposing the cancellation and the affected party may alter the time frames of (2) above. The 49 CFR Part 1312 time periods for protest and replies apply.

(4) *Content.* The content of the request and reply (other than pertinent mileage and cost data) will be left to the parties, though all information pertinent to the individual case should be included. The failure to provide information necessary to analyze the action under the criteria established in § 1144.3 may be treated as an admission against interest.

**§ 1144.2. Negotiation.**

(a) *Timing.* At least 5 days prior to challenging a cancellation of a through route or joint rate, or seeking the prescription of a through route, joint rate, or reciprocal switching, the party intending to initiate such action must first seek to engage in negotiations to resolve its dispute with the prospective defendants.

(b) *Participation.* Participation or failure to participate in negotiations does not waive a party's right to file a

timely request for suspension and/or investigation or prescription.

(c) *Arbitration.* The parties may use arbitration as part of the negotiation process, or in lieu of litigation before the Commission.

**§ 1144.3 Suspension.**

(a) *General.* Under these rules the Commission will suspend and investigate, investigate, or not suspend and investigate a proposed cancellation of a through route and/or joint rate. A persuasive presentation under all of the criteria below is sufficient for the Commission to determine that the requirements of 49 U.S.C. 10707(c)(1) have been met warranting suspension and investigation of the proposed cancellation. Failure to convince the Commission on any one of the criteria may result in either only an investigation (no suspension) or a determination not to investigate. This will be decided on a case-by-case basis.

(b) *Statutory factors.* A decision under (a) will be made based on the broad factors in 49 U.S.C. 10707(c)(1). The criteria considered in analyzing the factors in 49 U.S.C. 10707(c)(1) (A and B) are in (c) below. The requirements to keep account under 49 U.S.C. 10707(c)(1)(C) cannot be applied to cancellation cases, and will not be considered.

(c) *Criteria.* The Commission will suspend and investigate if a protestant shows:

(1) The cancellations of a through route and/or joint rate would eliminate effective railroad competition for the affected traffic between the origin and destination. Among other evidence, the Commission will consider two rebuttable presumptions to show the elimination of effective railroad competition: (i) That the mileage between the origin and destination over the route to be canceled is not more than that of any feasible alternative rail route; and (ii) that the cost of operating via the route to be canceled is not more than that of any feasible alternative rail route; and

(2) Either (i) a protesting shipper has used or would use the through route and/or joint rate proposed to be canceled to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or (ii) a protesting carrier has used or would use the affected through route and/or joint rate for a significant amount of traffic.

**§ 1144.4 Investigation of proposed cancellations.**

(a) *General.* The Commission shall determine that a proposed cancellation

of a through route and/or joint rate is contrary to the public interest under 49 U.S.C. 10705 if it finds that the cancellation, or a rate that would remain in place after the cancellation, is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive.

(b) *Factors.* In making its determination, the Commission will take into account all relevant factors, including:

(1) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(2) The efficiency of the rail routes in question, including the costs of operating via those routes.

(3) The rates charged or sought to be charged by the canceling railroad or railroads.

(4) The revenues, following the cancellation, of the involved railroads for the traffic in question via the affected through route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier will not be a basis for finding that a cancellation is anticompetitive.

(c) *Other considerations.* (1) The Commission will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) Where a cancellation has been determined to be contrary to the competitive standards of this section, the overall revenue inadequacy of the canceling carrier will not excuse such a cancellation.

(4) Any investigations of proposed cancellations under the terms of this paragraph will be conducted and concluded by the Commission on an expedited basis.

**§ 1144.5 Prescription.**

(a) *General.* A through route or a through rate shall be prescribed under 49 U.S.C. 10705, or a switching arrangement shall be established under 49 U.S.C. 11103, if the Commission determines:

(1) That the prescription or establishment (i) is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive, and (ii) otherwise satisfies the criteria of 49 U.S.C. 10705 and 11103, as appropriate. In making its determination, the



Commission shall take into account all relevant factors, including:

(A) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(B) The efficiency of the rail routes in question, including the costs of operating via those routes.

(C) The rates or compensation charged or sought to be charged by the railroad or railroads from which prescription or establishment is sought.

(D) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription or establishment is necessary to remedy or prevent an act contrary to the competitive standards of this section; and

(2) That either:

(i) the complaining shipper has used or would use the through route, through rate, or reciprocal switching to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or

(ii) the complaining carrier has used or would use the affected through route, through rate, or reciprocal switching for a significant amount of traffic.

(b) *Other considerations.* (1) The Commission will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) When prescription of a through route, a through rate, or reciprocal switching is necessary to remedy or prevent an act contrary to the competitive standards of this section, the overall revenue inadequacy of the defendant railroad(s) will not be a basis for denying the prescription.

(4) Any proceeding under the terms of this section will be conducted and concluded by the Commission on an expedited basis.

#### § 1144.5 General.

(a) These rules will govern the Commission's adjudication of individual cases pending on or after the effective date of these rules (October 31, 1985).

(b) These rules supersede the rules at 49 CFR Part 1132 to the extent they are inconsistent.

(c) Discovery under these rules is governed by the Commission's general rules of discovery at 49 CFR Part 1114.

(d) Any Commission determinations or findings under this Part with respect to compliance or non-compliance with the standards of §§ 1144.4 and 1144.5 shall not be given any *res judicata* or collateral estoppel effect in any litigation involving the same facts or controversy arising under the antitrust laws of the United States.

[FR Doc. 85-26421 Filed 11-5-85; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 204

[Docket No. 50957-5174]

#### OMB Control Numbers for NOAA Information Collection Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule; notice of OMB control numbers.

**SUMMARY:** NOAA is codifying the control numbers that have been issued by the Office of Management and Budget (OMB) for information collection requirements in Administration rules that are approved under the Paperwork Reduction Act. Control numbers will no longer appear as part of the section or part containing the information collection requirement, but will be centrally located in a table in new Part 204 of 50 CFR Chapter II, Subchapter A. **EFFECTIVE DATE:** November 8, 1985.

**FOR FURTHER INFORMATION CONTACT:** William B. Jackson, Fees, Permits, and Regulations Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235, 202-634-7432.

**SUPPLEMENTARY INFORMATION:** On March 31, 1983, OMB published final regulations under the Paperwork Reduction Act of 1980 (48 FR 13689). Section 1320.12, 1320.13, and 1320.14 of those regulations require that agencies display control numbers assigned by OMB to certain of the agencies' regulations that solicit or obtain information from ten or more members of the public. This rule sets forth these control numbers in tabular form.

#### Classification

The NOAA Administrator has determined that this regulation is not a "major rule" requiring a regulatory

impact analysis under Executive Order 12291.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

Because this regulation relates merely to an agency procedure for carrying out the requirement that OMB control numbers be displayed, the notice and public comment requirements of 5 U.S.C. 553 do not apply. Accordingly, this regulation is not subject to the Regulatory Flexibility Act.

#### List of Subjects in 50 CFR Part 204

OMB control numbers, Paperwork Reduction Act, Reporting and recordkeeping requirements.

Dated: October 31, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Chapter II is amended by adding a new Part 204 in Subchapter A as follows:

1. The authority citation for Part 204 is added to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

2. In Subchapter A—General Provisions—a new Part 204 is added to read as follows:

#### PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

##### § 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays control numbers assigned to information collection requirements of the National Marine Fisheries Service by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA) of 1980. This part fulfills the requirements of section 3507(f) of the PRA, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
§215.12	-0084 and -0085.
§215.13	-0084 and -0085.
§216.24 (b) (c)	-0083.
§216.24 (d)	-0085.
§216.24 (e)	-0080.
§216.31	-0084 and -0085.
§216.33	-0084 and -0085.
§222.11-2	-0076.
§222.11-8	-0079.
§222.12-7	-0078.
§222.23	-0084 and -0085.



50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648—)
§250.4	-0133
§250.14	-0133
§253.3	-0102 (pending)
§255.4	-0012 (pending)
§256.4	-0090
§256.11	-0041
§258.4	-0095
§258.22	-0094
§258.33	-0094
§259.30	-0090
§259.35	-0041
§265.21 (1)	-0097
§265.25 (d)	-0161
§265.27	-0031
§265.28	-0097
§265.29	-0013
§266.5	-0082

[FR Doc. 85-26547 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-2-M

**50 CFR Part 650**

[Docket No. 50835-5169]

**Atlantic Sea Scallop Fishery****AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Final rule and request for public comment.

**SUMMARY:** NOAA issues this final rule implementing Amendment 1 (amendment) to the Fisheries Management Plan for Atlantic Sea Scallops (FMP). These regulations implement the amendment by establishing a four-ounce standard for sea scallops which requires that the combined weight of the ten smallest scallops in one-pint samples averaged for all samples taken from a trip or lot equal at least four ounces. In addition, the regulations eliminate the temporary adjustment of the meat count/shell height standard and extends enforcement to all levels of processing while scallops are in their landed form, before they are sorted or graded for the retail market. The intended effects are to improve the conservation program for Atlantic sea scallops by reducing the mortality of small, immature scallops to enhance yield per recruit and the reproductive potential of the resource.

**DATES:** This action is effective January 1, 1986. Comments are invited until November 29, 1985.

**ADDRESS:** Copies of the amendment, environmental assessment, regulatory impact review, and regulatory impact analysis are available from Mr. Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts, 01906.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Kilbride, Scallop Management Coordinator, 617-281-3600.

**SUPPLEMENTARY INFORMATION:****Background**

The FMP was prepared by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils. The Amendment (1) establishes a minimum size standard, the four-ounce standard, whereby the combined weight of the ten smallest sea scallops in one-pint samples averaged for all samples taken from a trip or lot must weigh at least four ounces; (2) extends enforcement of this standard beyond the point of first transaction in the United States as long as the scallops remain in their landed form and (3) eliminates the temporary adjustment of the average meat count/shell height standard.

The purpose of the amendment is to reduce the taking of immature scallops. The selective harvest of small scallops will, if continued, dissipate the benefits anticipated from FMP implementation by reducing the yield per recruit and the reproductive potential of the resource. When the Council originally developed the FMP, it was with the expectation that an average meat count/shell height standard would provide sufficient protection for small scallops. However, during the spring and summer of 1983, significant numbers of very small, immature scallops recruited into the fishery in the south channel area of Georges Bank and were harvested at sizes as small as 80 meat count (the number of meats per pound). These small scallops were then mixed with larger ones, from different resource areas, to achieve the average meat count standard required by the FMP. A similar situation has occurred on the northern edge and peak of Georges Bank, and in the New York Bight area during 1985.

The four-ounce standard established by the amendment corresponds to a 40 meats per pound minimum scallop size. The long-term analysis indicates that a 40 meats per pound minimum size, applied on a trip basis, will result in approximately a 30 meat count average on an annual basis. This is the original goal of the FMP. In addition, it would provide adequate protection from overfishing since most sea scallops which have reached this size have spawned once.

Amendment 1 replaces the average meat count/shell height standard with the four-ounce standard, and at the same time, eliminates the temporary adjustment of the management standard. The four-ounce standard is expected to result in catches that vary in average size based on recruitment.

Under the average meat count approach of the original FMP, enforcement was limited to the point of first transaction in the United States. Consequently, paper transfers of landed scallops could easily and quickly move illegal scallops beyond the first transaction in the United States and beyond the reach of law enforcement officials. Amendment 1 provides for the enforcement of the four-ounce standard by prohibiting the possession of non-conforming scallops in landed form at all times and places in the United States. Enforcement resources of NMFS are limited, however, and it is impossible to monitor all landings of scallops to ensure compliance with the four-ounce standard. Therefore, this new standard will be enforced dockside, and at all levels of processing while the scallops are in landed form, before they are sorted or graded for the retail market.

Proposed regulations to implement the amendment were published on August 16, 1985 (50 FR 33083). The public comment period ended on September 27, 1985. Five written comments were received.

**Response to Public Comment**

Written comments were submitted by the New England Fishery Management Council (Council), the Seafood Producers' Association (SPA), Wells Scallop Company (WSC), Cape Oceanic Corporation (COC), and a sea scallop fisherman.

**Comment (1):** The Council raised several concerns regarding the compliance and sampling procedures. The first concern was that the proposed rule did not adequately implement the Council's intent that the four-ounce standard be representative of the entire catch. The Council suggested that representative samples should be drawn from the catch, and they should be collectively analyzed to establish whether the trip is in compliance. It also suggested that large trips be sampled more intensively than small trips.

**Response:** The compliance and sampling procedures contained in the interim regulations are revised from the proposed rule and are based on specific comments provided by the Council. The numbers of bags selected for sampling are to be based on a minimum number or a percentage of the total number of bags in possession. These bags, each representing an individual sample, are to be analyzed as a group to determine compliance with the four-ounce standard.

NOAA did not adopt the Council's suggestion that ten percent of each



specific trip would be sampled. While NOAA has adopted the Council's comment that a minimum of ten (10) bags be sampled per trip, sampling up to ten percent of each trip may be done at the discretion of the authorized officer, based upon the variability of the samples within the sample group. NOAA had determined that it may not be necessary on some trips to sample ten percent of the bags to obtain an accurate representation of the trip.

NOAA did not adopt the Council's comment that samples be drawn from the center of a bag. From a practical standpoint, having to prove that a sample was drawn from the center of a bag would be virtually impossible. Further, it might allow fishermen to stratify a bag by placing small scallops at the top and bottom of the bag, thereby frustrating enforcement efforts and the objective of the FMP.

NOAA believes that the revised compliance and sampling procedures fully address the Council's concerns, and implement the intent of the amendment.

*Comment (2):* The Council suggested that the four-ounce standard be adjusted seasonally to account for weight loss of the scallop meat during spawning.

*Response:* NOAA believes that implementing a seasonal adjustment to the four-ounce standard is not appropriate because the amendment does not address this management issue. NOAA recommends the Council consider an amendment to address seasonal adjustment.

*Comment (3):* The SPA and COC expressed concern over the difficulty of at-sea compliance by requiring fishermen to determine when an individual scallop weighs at least 0.4 ounce.

*Response:* NOAA is aware that reasonable diligence by fishermen may not avoid the shucking of scallops that weigh less than 0.4 ounce. The Council addressed this problem following the public hearings in the spring of 1984 by shifting the focus of the standard away from the individual scallop. The four-ounce standard now requires that the average of the combined weight of the ten smallest scallops in the one-pint samples be a minimum of four ounces averaged for each trip. This embraces a level of tolerance to account for small scallops which are inadvertently shucked.

When NOAA published the proposed rule, the intent of the amendment with respect to the level of tolerance that would be allowed was interpreted to require samples from as many as two bags in any given trip. The Council commented that this tolerance was well

below what they contemplated when the amendment was drafted. In response to that comment, NOAA has revised the sampling procedure to better reflect what the Council intended. The sampling procedure now requires an authorized officer to sample at least ten bags, but not more than ten percent of the bags in any trip. A violation results only if the average of the aggregate weights of all samples taken is less than four ounces.

*Comment (4):* Comments received from the SPA, COC, a fisherman, and WSC expressed concern regarding the adverse economic impacts that could result from the implementation of the amendment.

*Response:* The Council examined the economic impact of the four-ounce standard when formulating the amendment. The analysis supporting the Council's decision suggests the potential impacts of the new standard will likely be mitigated at the end of one fishing year as the forgone catch of small scallops early in the year grow and recruit during the second fishing year following implementation. Long-term benefits to harvesters associated with the achievement of FMP objectives are expected to commence within the third year of implementation.

*Comment (5):* The SPA, COC, and a scallop fisherman commented that the amendment is not workable, and therefore, alternative measures should be considered.

*Response:* The Council has discussed alternative measures to manage the scallop fishery, such as closed area and gear restrictions. These discussions will continue in the future as the Council addresses the problems facing the sea scallop industry. The intent of the amendment is to rectify an unforeseen problem that developed after implementation of the FMP. When the Council originally developed the FMP, it was with the expectation that an average meat count/shell height standard would provide sufficient protection for undersized scallops in order to enhance yield per recruit and the reproductive potential of the resources. Data have shown that the average meat count/shell height standard of the FMP has not reduced exploitation on young and immature scallops as originally intended.

#### Changes to the Proposed Regulations

The final rule differs from the proposed rule in order to clarify the extent, beyond the point of first transaction in the United States, that the four-ounce standard will be enforced. Section 650.2 defines the terms *Bag* and *Landed Form*. Section 650.20 includes

language which states that the four-ounce standard applies to all sea scallops in their landed form and before they are sorted and graded for the retail market.

At § 650.21(b) (1) and (3), the compliance and sampling procedures have been revised from the proposed rule to implement the Council's intent that the four-ounce standard be representative of the entire trip. The revised procedures require an authorized officer to sample at least ten bags of scallops, but not more than ten percent of the bags in any one trip. A violation results only if the average of the aggregate weights of all samples taken is less than four ounces. If the scallops are in control or possession of a dealer/processor, the total number of bags in possession, for sampling and seizure purposes, will be determined by analyzing such factors as the source (as indicated by markings on the container, invoices, receipts, etc.), and location (i.e., physical isolation in one area of the processor's premises or in one large container). Once the amount of scallops subject to the investigation has been determined, the sampling procedure shall continue as outlined in § 650.21.

The Secretary is requesting further public comment on the changes to the sampling and compliance provisions of the proposed rule until November 29, 1985. The Secretary will consider all public comments received and will issue notice in the *Federal Register* modifying or leaving unchanged the final rule. The effective date of the final rule has been delayed until January 1, 1986, so as to conform with the start of the 1986 fishing year.

#### Classification

The Regional Director determined that the amendment is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the environmental assessment from the Council at the address listed above.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary was published at 50 FR 33083. A supplemental RIR was prepared to address benefits and costs associated with enforcing the four-ounce standard on sea scallops in landed form at all



times and places in the United States. It has been determined that the enforcement costs and costs to the industry will be minimal. You may obtain a copy of this supplement from the Council at the address listed above.

The Council prepared a final regulatory flexibility analysis which describes the effects this rule will have on small entities. You may obtain a copy of this analysis from the Council at the address listed above.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, and North Carolina. This determination was submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination, except for Maine and Rhode Island which failed to comment within the statutory time period.

#### List of Subjects in 50 CFR Part 650

##### Fisheries.

Dated: November 1, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

#### PART 650—[AMENDED]

For the reasons set out in the preamble, NOAA amends 50 CFR Part 650 as set forth below:

1. The authority citation for Part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The Table of Contents is amended by revising the headings for §§ 650.20 and 650.22 as follows:

#### Subpart B—Management Measures

\* \* \* \* \*

Sec.

650.20 Four-ounce standard.

\* \* \* \* \*

650.22 Review of resource status.

#### § 650.1 [Amended]

3. Section 650.1 is amended by removing the last sentence.

4. In § 650.2, the definition of *Non-conforming Atlantic sea scallops* is revised, and the definitions of *Bag*, *Four-ounce standard*, and *Landed form* are added alphabetically as follows:

#### § 650.2 Definitions.

\* \* \* \* \*

*Bag* means a sack normally made from cheesecloth which holds forty (40) pounds, more or less, of shucked scallop meats.

\* \* \* \* \*

*Four-ounce standard* means that the ten smallest scallops in a one-pint sample must weight at least four (4.0) ounces.

\* \* \* \* \*

*Landed form* means landed scallops which have not been sorted or graded according to size for the retail market.

\* \* \* \* \*

*Non-conforming Atlantic sea scallops* means scallops which do not meet the standards specified in § 650.20 of these regulations, unless, for the purposes of compliance with the four-ounce standard measurement provisions of that section, the scallops have been certified, through a procedure specified by the Regional Director, to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations. Certified sea scallops will be deemed to be non-conforming unless they are accompanied at all times by positive documentary evidence of their certification.

\* \* \* \* \*

5. In § 650.7, the introductory text of the section is set out for the convenience of the reader and paragraph (a) is revised to read as follows:

#### § 650.7 Prohibitions.

It is unlawful for any person:

(a) To possess any non-conforming Atlantic sea scallops once they have been landed in the United States.

(1) Atlantic sea scallops will be subject to inspection at all times and places in the United States for conformance with the four-ounce standard, in accordance with the compliance and sampling procedures specified in § 650.21.

(2) Atlantic sea scallops will be subject to inspection at all times and places in the United States for conformance with certification provisions, where applicable.

\* \* \* \* \*

6. Section 650.20 is revised to read as follows:

#### § 650.20 Four-ounce standard.

A four-ounce standard will apply to all sea scallops in their landed form, whether the scallops are shucked at sea or landed in the shell.

7. Section 650.21 is revised to read as follows:

#### § 650.21 Compliance and sampling procedures.

(a) Compliance with the four-ounce standard will be subject to inspection at all times and places in the United States. For the purposes of inspecting scallops in the shell to determine compliance with the four-ounce standard, an authorized officer may, at his discretion, direct the person in possession of the scallops to shuck, or delay inspection until sufficient scallops have been shucked, to allow the taking of samples as specified below.

(b) (1) The authorized officer will take one-pint samples from containers or bags holding the total amount of scallop meats in possession. For the purpose of determining the number of bags of scallops in possession, an inquiry will be made, if possible, to the individual in possession or control of the scallops. No more than 10 percent of the bags in possession, or declared to be in possession, (or at least 10 bags) will be sampled by an authorized officer. If the number of bags of scallops in possession or control of a person is less than 10, each bag or container must contribute one, one-pint sample to the overall sampling procedure. The portion of the total scallops in possession of a dealer/processor that will be treated as a separate entity for the purpose of sampling will be determined upon consideration of several factors including, but not limited to, the source of those scallops, and/or their physical isolation from other groups of scallops on the premises. If a party in possession or control of the scallops is unavailable, or refuses to declare the number of scallops held by him, then the number of bags will be determined by the authorized officer conducting the inspection. If a party is in possession or control of scallops in their landed form which are not in bags, the authorized officer will bag a sufficient number of scallops from the container to perform the sampling procedure. If scallops are found which had not been declared or determined to be part of the total amount of scallop meats in possession,



these scallops will be treated as a separate entity or sampling purposes.

(2) A sample fails to comply with the four-ounce standard if the ten smallest scallop meats in the one-pint sample weigh less than four ounces. If a sample fails to meet the four-ounce standard, the authorized officer may take, if requested by the person in possession or control of the scallops, another sample from the bag or container from which the non-complying sample was drawn. The authorized officer will average the weights of the two samples. The average aggregate weight of the ten smallest scallops from both one-pint samples will determine if the bag meets the standard.

(3) A violation of the four-ounce standard occurs if the average of the aggregate weights of the ten smallest scallops in all the one pint samples taken fails to meet the four-ounce standard. If a violation of the four-ounce standard is found among those undeclared scallops from a particular vessel and being treated as a separate entity for the purpose of sampling, the entire amount of scallops in possession or control will be deemed in violation. If a violation of the four-ounce standard is found among scallops possessed by a dealer/processor, only those scallops being treated as a separate entity for the purpose of sampling (i.e., the total amount of scallops, up to 10 percent of which has been drawn as samples) will be deemed in violation.

8. Section 650.22 is revised to read as follows:

**§ 650.22 Review of resource status.**

(a) *Scope and purpose of review.* The Regional Director will review the status of the Atlantic sea scallop resource on a continuing basis, and will, at least annually, prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry which might require amendment of the FMP. The Council may, at any time, request that such a report be prepared within sixty days.

(b) *Sources of information.* The Regional Director will consider all available resource and assessment information, especially the most recently completed survey and assessment, when preparing his report. The Regional Director will also consider reports and records maintained by fishermen and made available as a part of the fishery statistics program; other fishery statistics; and any other available information which increases understanding of prevailing conditions

of the stock, the fishery, and the industry.

[FR Doc. 85-26531 Filed 11-4-85; 8:45 am]  
BILLING CODE 3510-22-M

**50 CFR Part 652**

[Docket No. 50575-5075]

**Atlantic Surf Clam and Ocean Quahog Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of ocean quahog fishery time adjustment.

**SUMMARY:** NOAA issues this notice to reduce the allowable fishing time for ocean quahogs from seven days per week to five days per week, beginning 0001 hours Sunday to 2400 hours Thursday, throughout the fishery conservation zone. This action is required to prevent the ocean quahog quota from being exceeded and to avoid a prolonged closure of the fishery.

**EFFECTIVE DATE:** November 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Monique Rutledge, (Plan Coordinator), 617-281-3600, extension 272.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog fisheries contain at 50 CFR 652.22(c)(2) a provision to reduce the number of days during which fishing for ocean quahogs is allowed, as follows: "When 50 percent of the quota of ocean quahogs for any time period indicated in § 652.2(c) of this part has been caught, the Regional Director will, or review of available information and public comment, determine whether the total catch of ocean quahogs during the applicable time period will exceed the quota for that time period. If the regional Director determines that the quota will be exceeded, the Secretary may reduce the number of days during which fishing for ocean quahogs is allowed."

Logbooks submitted by fishermen and processors show that as of September 27, 1985, the ocean quahog harvest had reached 3,720,000 bushels out of a 1985 quota of 4,400,000 bushels. Thus, with 75 percent of the fishing year completed, 85 percent of the quota has been harvested.

The Regional Director has determined that a reduction in allowable fishing time is necessary to prevent the 1985 fishing year quota from being exceeded. In order to restrain effort in the fishery as quickly as possible while minimizing the regulatory burden on the industry as well as the administrative and enforcement burden on the Agency, the

Regional Director has designated a reduced ocean quahog fishing week. Therefore, this notice reduces fishing time for ocean quahogs from seven days per week to five days per week, from 0001 hours Sunday through 2400 hours Thursday. This fishing week for ocean quahogs will remain effective until further notice or until the start of the 1986 fishing year.

**Other Matters**

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

**List of Subjects in 50 CFR Part 652**

Fisheries.

Dated: November 1, 1985.

Carmen J. Blondin,  
Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-26532 Filed 11-4-85; 8:45 am]

BILLING CODE 3510-22-M

**50 CFR Part 675**

[Docket No. 50834-5167]

**Groundfish of the Bering Sea and Aleutian Islands Area**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues a final rule to implement approved portions of Amendment 9 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Two parts of the amendment are approved: (1) The catcher/processor and mothership vessel reporting requirements; and (2) incorporation of the NMFS habitat protection policy. A proposed regulation authorized by the latter is reserved until an analysis of the measure is prepared. One measure, which would have closed the area within 20 miles of the Aleutian Islands to foreign trawling, is disapproved. A definition of "directed fishing" is also included in this final rule. The approved measures are necessary for conservation and management of the groundfish resources and are intended to promote the orderly conduct of the fishery.

**EFFECTIVE DATE:** December 1, 1985.

**ADDRESS:** Copies of the amendment, the environmental assessment, and the regulatory impact review/final regulatory flexibility analysis may be



obtained from the North Pacific Fishery Management Council, P.O. BOX 103130, Anchorage, AK 99510, 907-274-4563.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson (Chief, Fisheries Management Operations Division, NMFS) 907-588-7230.

**SUPPLEMENTARY INFORMATION:** The domestic and foreign groundfish fishery in the 3-to-200-mile fishery conservation zone (FCZ) in the Bering Sea and Aleutian Islands Area is managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR Part 675.

The Council approved the three parts of this Amendment 9 to the FMP at its May 21-24, 1985, meeting and submitted it to the Secretary of Commerce for review. Following receipt of Amendment 9 on July 15, 1985, the Director, Alaska Region, NMFS (Regional Director) immediately commenced a review to determine whether it was consistent with the national standards, other provisions of the Magnuson Act, and any other applicable law. A Notice of Availability was published in the Federal Register on July 18, 1985 (50 FR 29240). Proposed regulations were published in the Federal Register on August 16, 1985 (50 FR 33080). Public comments were invited until September 30, 1985. The decisions on Amendment 9 take these comments into account and they are summarized below and responded to according to subject.

The preamble to the proposed rule described and presented the reasons for each part of Amendment 9. A summary of what each approved part accomplishes follows:

#### Catcher/Processor and Mothership Vessel Reporting Requirements

These requirements consist of three parts. The first part requires the operators of catcher/processor and mothership vessels to indicate on their applications for Federal fishing permits their capability and intent to preserve their catch at sea. The second part requires them to notify the Regional Director of the date, hour, and position, 24 hours before starting and upon stopping fishing in a regulatory area. This requirement enables NMFS and the Coast Guard to check compliance with fishery openings and closures and the weekly catch reporting requirements, and to verify fishing effort by regulatory

area. The third part requires each operator of a catcher/processor or mothership vessel that retains fish at sea for more than 14 days from the time it is caught or received to provide the Regional Director a weekly written report of the amounts of groundfish caught or received by species or species group in metric tons by fishing area.

A definition of "directed fishing" is also established. The purpose of this definition is to establish that, when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest that results from any fishing over any period or time, such fishing is rebuttably presumed to be directed fishing for such fish during that period.

#### Incorporation of the NMFS Habitat Protection Policy

This part of Amendment 9 is approved but a proposed regulation authorized by this part is not implemented at this time. This part amends the FMP to address the habitat requirements of individual species in the Bering Sea and Aleutian Islands area groundfish fishery. It describes the diverse types of habitat within the Bering Sea and Aleutian Islands area and delineates the life stages of the groundfish species, identifies potential sources of habitat degradation and the potential risk to the groundfish fishery, and describes existing programs applicable to the area that are designed to protect, maintain, or restore the habitat of living marine resources. The amendment responds to the Habitat Conservation Policy of NMFS (48 FR 53142, November 25, 1983), which advocates consideration of habitat concerns in the development or amendment of FMPs and the strengthening of NMFS' partnerships with States and the Councils on habitat issues.

It authorizes, but does not require, regulations specific to habitat conservation objectives. A regulation to require vessel operators to retrieve their own lost fishing gear and to make a reasonable attempt to retrieve any abandoned or discarded fishing gear that they may encounter was included in the notice of proposed rulemaking. However, it is not being included in the final rule because it has not been adequately analyzed under requirements of Executive Order 12291, the Regulatory Flexibility Act, and the National Environmental Policy Act.

#### The Aleutian Islands Foreign Trawl Closure

The Regional Director has disapproved the measure that would have prohibited foreign trawling within

20 miles of the Aleutian Islands. The Council's objective underlying this measure was to reduce the foreign catch of species fully utilized by U.S. fishermen. The Council has identified these as being Atka mackerel, sablefish, and Pacific ocean perch. Each of these species occurs along the Aleutian Islands generally in greater densities shoreward of 20 miles compared to densities seaward of 20 miles. This distribution is caused by the steep slopes along the Aleutian chain where more favorable habitat for these near-bottom species occurs shoreward of 20 miles.

This measure is disapproved because the FMP already contains effective means to reduce foreign catches of these species which the Council has already used. In 1985, for instance, total allowable level of foreign fishing (TALFF) specifications were set to allow only minimal bycatches. The combined TALFF for all three species was only 410 metric tons (mt) in 1985 compared to 1,903 mt in 1983 and 18,859 mt in 1981 when directed fisheries on these species occurred. As these figures show, the Council has already effectively reduced the foreign catch of these species and could, in fact, eliminate them if they chose to set total allowable catches equal to domestic allowable harvests in the Aleutian area (i.e., zero TALFF). A 20-mile closure around the Aleutian Islands to all foreign trawling is, therefore, unnecessary to achieve the Council's stated objective.

In addition, the Council has not adequately established that domestic fishermen would receive any additional benefits from the closure through reductions of foreign incidental catches of these species below the 1985 level of apportionments.

For the reasons above, NOAA has determined that approval and implementation of the 20-mile closure would violate National Standard 7 of the Magnuson Act. This standard requires conservation and management measures, where practicable, to minimize costs and avoid unnecessary duplication. Part 662, Guidelines for Fishery Management Plans, provides criteria to be considered when judging measures against the national standards. In reviewing the proposed closure with regard to National Standard 7, NOAA considered (1) the extent that the fishery could be or is already adequately managed by Federal regulations, and (2) whether the supporting analyses demonstrated that the benefits to domestic fishermen of the proposed foreign trawl closure are real and substantial relative to the added



research and administrative costs. NOAA finds the proposed measure to cause unnecessary duplication, because the FMP's existing management regime already provides the Council the means to accomplish its objective of reducing foreign catches of fully utilized species. The Regional Director also finds that the supporting analysis contained in the regulatory impact review prepared for this measure does not show that the benefits of the measure to domestic fishermen would be real and substantial.

#### Changes in the Final Rule From That Proposed

NOAA has made the following changes to cause this final rule to differ from the proposed rule: The new § 675.25, Disposal of fishing gear and other articles, is held in reserve until additional analysis is provided. In addition, minor technical changes are made to regulatory text.

#### Public Comments Received

Written responses were received from representatives of the Japan Deep Sea Trawlers Association and the Hokuten Trawlers Association, the North Pacific Fishing Vessels Owners' Association, the North Pacific Fishery Management Council, and the Korean fishing industry. These comments have been summarized and responded to as follows:

**Comment 1.** The Council did not provide for full and informed public participation in the amendment process when it (1) failed to disclose the objectives of the 20-mile closure around the Aleutian Islands and cited new objectives for the closure after the opportunity for public comment had passed; (2) failed to provide draft plan amendment language and proposed regulations to the public prior to adoption of the amendment and proposed regulations; and (3) conducted meetings from which the public was improperly excluded.

**Response.** NOAA has reviewed the record of Council discussion and public testimony from the time the Council first adopted the closure at its December 1984 meeting through the May 1985 meeting when the Council approved the closure to be submitted to the Secretary. The Council's objective in proposing the closure was clearly stated as being to reduce the foreign incidental catch of groundfish species fully utilized by domestic fishermen in the Aleutian Islands area.

NOAA recognizes that fullest public participation would be enhanced whenever draft amendment language and proposed regulations could be made

available early in the Council's decision process, but this is not mandatory. Time constraints and a limited Council staff often makes the preparation of alternative regulations and amendment text impracticable during the entire public hearing phase when many alternatives are considered. Draft amendment text and regulations were considered by the Council prior to its making a final decision on the closure.

The Regional Director advises that all decisions were made on the public record and are supported in the administrative record.

**Comment 2.** The Aleutian Islands closure is arbitrary and capricious, because no basis exists in the administrative record to conclude that the closure would accomplish its stated objectives.

**Response.** The Council's stated objective in prohibiting trawling within 20 miles of the Aleutian Islands was to reduce the foreign bycatch of groundfish species fully utilized by the U.S. fishing industry. NOAA concurs that the Council did not present any compelling evidence to indicate that the proposed closure would accomplish this objective any better than it could be accomplished with management measures already available to the Council under the present FMP.

**Comment 3.** The Aleutian Islands closure is unnecessary and redundant and is therefore inconsistent with the requirements of National Standard 7 and Executive Order 12291.

**Response.** Comment noted. This comment is responded to earlier in this preamble where NOAA gives its reasons for disapproval of this part.

**Comment 4.** The regulatory analyses prepared by the Council are legally defective, because they did not identify socioeconomic objectives or analyze alternative measures to achieve these objectives.

**Response.** NOAA concurs that the Council's regulatory analyses did not clearly state and analyze any specific "socioeconomic" objectives other than the principal objective of reducing foreign bycatch of species fully utilized by U.S. fishermen. The Council did, however, analyze the "status quo" alternative as well as a zero TALFF option.

**Comment 5.** The environmental assessment does not adequately assess the environmental impacts of the Aleutian Islands closure and its principal alternatives.

**Response.** Comment noted.

**Comment 6.** The Aleutian Islands closure violates National Standard 2, because the Council's Scientific and Statistical Committee advised the

Council that the effect of the closure on bycatch could not be predicted and that effective means to control bycatch were already available under the "status quo."

**Response.** Comment noted. Effective means to reduce foreign bycatch are available under the "status quo."

**Comment 7.** The Aleutian Islands closure violates National Standard 5, because it was adopted solely to allocate economic benefits to U.S. fishermen at the expense of foreign fishermen.

**Response.** Comment noted. The Council adopted the closure to alleviate the problem of bycatch of fully utilized species.

**Comment 8.** The Council failed to provide a reasoned explanation for its choice between the available alternatives.

**Response.** NOAA concurs.

**Comment 9.** The text in the proposed § 675.25(b), Disposal of fishing gear and other articles, must include the word "floating" between the words "discarded" and "fishing" to be consistent with specific regulatory language approved by the North Pacific Fishery Management Council.

**Response.** This part of the regulation is being reserved at this time until further analysis is provided.

#### Classification

The Regional Director determined that the approved part of the amendment is necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment for this amendment and concluded that no significant impact on the human environment will result from this rule. A copy of the environmental assessment may be obtained from the Council at the address above.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) prepared by the Council. A copy of the RIR/IRFA may be obtained from the Council at the address above.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis (FRFA) was not prepared. Had the



measure prohibiting trawling within 20 miles of the Aleutian Islands been approved, an FRFA would have been prepared. The catcher/processor and mothership vessel reporting requirements are not significant within the meaning of the Regulatory Flexibility Act. This determination is based on the RIR/IRFA that was prepared for the proposed rule. A summary of the RIR/IRFA on the effects of the catcher/processor reporting requirement is contained in the preamble to the proposed rule.

This rule contains collection of information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget and continues under OMB Control Numbers 0648-0097 and -0016.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted to the responsible State agencies for review under section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

#### List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: November 1, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 675 is amended as follows:

#### PART 675—GROUND FISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.2, the following definition is added in proper alphabetical order:

#### § 675.2 Definitions.

*Directed fishing*, with respect to any species, stock, or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking or harvesting of quantities of such fish and amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish

comprises 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed fishing for such fish.

3. In § 675.4, paragraphs (b), (d), and (e) are revised to read as follows:

#### § 675.4 Permits.

(b) *Application*. The vessel permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a written application containing the following information:

- (1) The vessel owner's name, mailing address, and telephone number;
- (2) The name of the vessel;
- (3) The vessel's U.S. Coast Guard documentation number or State registration number;
- (4) The home port of the vessel;
- (5) The type of fishing gear to be used;
- (6) The length and net tonnage of the vessel;
- (7) The hull color of the vessel;
- (8) The names of all operators and/or lessees of the vessel;
- (9) Whether the vessel is to be used in fish harvesting, in which case the type of fishing gear to be used must be specified; or for support operations, including the receipt of fish from U.S. vessels at sea; and
- (10) The signature of applicant.

(d) *Notification of change*. (1) Except as provided in paragraph (d)(2) of this section, any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(2) A permit issued under this section will authorize either harvesting or support operations, but not both. The notification to the Regional Director under paragraph (d)(1) of this section of a change in the type of operations in which that vessel is to engage must be completed before that vessel begins the new type of operation.

(e) *Duration*. A permit will continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under Part 621 (Civil Procedures) of this chapter.

4. In § 675.5, a new paragraph (a)(3) is added, to read as follows:

#### § 675.5 Reporting requirements.

(a) \* \* \*

(3) *Catcher/processor and mothership/processor vessels*. The operator of any fishing vessel regulated under this part who freezes or dry-salts any part of its catch of groundfish on board that vessel and retains that fish at sea for a period of more than 14 days from the time it is caught, or who receives groundfish at sea from a fishing vessel regulated under this part and retains that fish at sea for a period of more than 14 days from the time it is received, must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Twenty-four hours before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the area of such activity. No such operator may retain any part of that vessel's catch or cargo of fish on board that vessel for a period of more than 14 days from the time it was caught or received unless the Regional Director was notified as required under paragraph (a)(3)(iv) of this section during that period.

(ii) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning fishing or receiving groundfish in the new area and the position of the new fishing activity. The notice must be sent to the Regional Director within 48 hours of shifting.

(iii) The notices required in paragraphs (a)(3)(i) and (ii) should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska, who will relay them to the Regional Director. Only if adequate private or commercial communications facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(iv) After the first catch or receipt of groundfish at sea by that vessel during that period and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel must submit a weekly catch or receipt report for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period, during which groundfish were caught or received at sea. Catch or receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under



§ 675.4 of this part. These reports must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Bering Sea and Aleutian Islands fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or received at sea by that vessel during the reporting period by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or off-loaded;

(E) The area in which each species or species group was caught; and,

(F) If any species or species groups were caught in more than one area

during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area.

5. In addition to the above amendments, technical changes and corrections are made to read as follows:

**§ 675.4 [Amended]**

a. In § 675.4(b), in the last sentence, the word "of" is inserted after "requirements".

b. In § 675.4(c)(2), (d), (e), the second occurrence in (f), and (g), and in § 675.20(a)(6), (b)(1)(i) and (ii), (b)(2)(ii), (c)(4), and (d), the word "shall" is changed to "will".

c. In § 675.4(e) and in § 675.7(a), the phrase "pursuant to" is changed to "under".

d. In § 675.4(f), the words "shall alter" are changed to, "may alter".

e. In § 675.4(h), in § 675.5(a)(1), and in § 675.20 (c)(2) and (c)(3), the word "shall" is changed to "must".

f. In § 675.5(a)(1), (a)(2)(i), and (a)(2)(ii), the acronym "ADF and G" is changed to "ADF&G".

g. In § 675.5(b), the words "United States" are changed to "U.S." and the phrase "United States harvested" is changed to "U.S.-harvested".

**§ 675.20 [Amended]**

h. In § 675.20(a)(6), the heading "Rule-related notice." is changed to "Notices."

i. In § 675.20(a)(6), (b)(1)(i) and (ii), and (b)(2)(i), the phrase "rule-related" is removed.

[FR Doc. 85-26534 Filed 11-4-85; 8:45 am]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register

Vol. 50, No. 215

Wednesday, November 6, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 51

[Docket No. 85-026]

#### Payment of Indemnity for Animals Destroyed Because of Brucellosis

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the regulations concerning the payment of indemnity for animals destroyed because of brucellosis. This document would amend the brucellosis indemnity regulations to clarify definitions, to amend the definitions of "brucellosis reactor animal" and "brucellosis exposed animal," to add the definitions of "State animal health official" and "unofficial vaccinate," and to replace references to the "1975 Recommended Uniform Methods and Rules" with references to the "official test" for brucellosis as defined in 9 CFR 78.1. These proposed amendments appear to be necessary to provide for the proper brucellosis disease status classification of animals so that indemnity payment can be made for animals which are affected with and exposed to brucellosis.

**DATE:** Written comments must be received on or before January 6, 1986.

**ADDRESS:** Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should indicate that they are in response to Docket No. 85-026. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Granville H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

#### SUPPLEMENTARY INFORMATION:

##### Background

This document proposes to amend the "Animals Destroyed Because of Brucellosis" regulations in 9 CFR Part 51 (referred to below as the indemnity regulations) which contain provisions governing the payment of indemnity for cattle, bison, and breeding swine destroyed because of brucellosis. Specifically, this proposal would amend the definitions of "brucellosis reactor animal," and "brucellosis exposed animal," add definitions of "State animal health official" and "unofficial vaccinate," and replace references to the "1975 Recommended Uniform Methods and Rules" with references to the "official test" for brucellosis as defined in 9 CFR 78.1.

##### Vaccinates

Present § 51.1(1) defines "official vaccinate." This proposal would delete the definition of "official vaccinate" since this term is not used in the indemnity regulations. However, the term "unofficial vaccinate," which is not defined for the purposes of the indemnity regulations, is used. Specifically, the term "unofficial vaccinate" is used in present § 51.9(e) which provides that claims for compensation for animals shall not be allowed if the animals are classified as reactors and are unofficial vaccinates, unless certain specified provisions are met.

This proposal would add a definition of "unofficial vaccinate" to clarify the meaning of the term as used in § 51.9(e). Specifically, "unofficial vaccinate" would be defined as "[a]ny cattle or bison which have been vaccinated for brucellosis other than in accordance with the provisions for official vaccinates as set forth in § 78.1 of this chapter."

The provisions for official vaccinates set forth in 9 CFR 78.1 are designed to provide a combination of a high level of resistance to brucellosis and a low number of animals with persistent vaccine related titers. Cattle or bison which are vaccinated not in accordance with the provisions set forth for official

vaccinates in 9 CFR 78.1 may be improperly classified as brucellosis reactors. This proposed amendment would clarify the provisions in the indemnity regulations which enable the Department to disallow claims for brucellosis reactors which have been vaccinated other than in accordance with 9 CFR 78.1 unless tests referred to in present § 51.9(e) confirm that the unofficial vaccinate is affected with brucellosis.

##### Brucellosis Exposed Animals

This proposal would amend the definition of "brucellosis exposed animal" by specifying additional circumstances under which an animal can be classified as being brucellosis exposed.

Present § 51.1(t) provides that, except for brucellosis reactor animals, a brucellosis exposed animal is one that is part of a herd known to be affected or that has been in contact with a brucellosis reactor animal in marketing or other channels for a period of 24 hours if the brucellosis reactor animal has aborted, calved or farrowed within the past 30 days or has a vaginal or uterine discharge. This proposal would expand the circumstances under which an animal would be classified as a "brucellosis exposed animal." Specifically, the proposed definition of "brucellosis exposed animal" would be provide that, except for brucellosis reactor animals, a brucellosis exposed animal is an animal that (1) is part of a herd known to be affected, (2) has been in contact with a herd known to be affected, (3) has been in contact with a brucellosis reactor for a period of 24 hours or longer, or (4) has been in contact with a brucellosis reactor which has aborted, calved or farrowed within the past 30 days or has a vaginal or uterine discharge. These proposed additional circumstances under which an animal would be classified as a "brucellosis exposed animal" have been determined to be circumstances under which the transmission of brucellosis can occur and circumstances under which indemnity may be paid for the destruction of such animals.

##### Brucellosis Reactor Animals

This proposal would amend the definition of "brucellosis reactor animal" by eliminating the reference to the 1975 Recommended Uniform



Methods and Rules and replacing it with a reference to the "official test" for brucellosis as defined in 9 CFR 78.1.

Present § 51.1(s) provides that a brucellosis reactor animal is one that reacts to the tests set forth in the 1975 Recommended Uniform Methods and Rules. This proposal would provide that a brucellosis reactor animal is one that is classified as a brucellosis reactor by an official test as defined in 9 CFR 78.1.

The 1975 Recommended Uniform Methods and Rules provides that swine may be classified as brucellosis reactor animals by a card test, standard tube test, or the semen plasma test. This proposal would, by referencing the official test in 9 CFR 78.1, retain the card test and standard tube test for swine. However, the semen plasma test would be deleted as a method for classifying swine as brucellosis reactor animals for the purposes of the indemnity regulations. There have been no known claims for indemnity based upon the semen plasma test for swine, and it is rarely used for any other purpose. The infrequent use of the semen plasma test for swine makes it difficult to interpret the test with consistency.

The 1975 Recommended Uniform Methods and Rules provides that cattle and bison may be classified as brucellosis reactor animals by a card test, standard tube test, and the semen plasma test. This proposal would, by referencing the official test as defined in 9 CFR 78.1, retain the card test, the standard tube test and the semen plasma test, and add the complement-fixation test and rivanol test. The complement-fixation test and rivanol test would be added because they have been found by the Department to accurately classify cattle and bison as brucellosis reactor animals.

#### Claims Not Allowed

This proposal would also eliminate the reference to the 1975 Recommended Uniform Methods and Rules in present § 51.9(b) and replace it with a reference to the "official test" for brucellosis as defined in 9 CFR 78.1.

Present § 51.9(b) specifies that claims for indemnity will be disallowed if the existence of brucellosis in any animal was determined as a result of an agglutination test applied in accordance with the 1975 Uniform Methods and Rules by an accredited veterinarian and specific instructions for the administration of such test had not previously been issued to such veterinarian by the proper Veterinary Services and State authorities. As explained under subheading "Brucellosis Reactor Animals" above, the Department believes that the 1975

Recommended Uniform Methods and Rules are out-of-date and not consistent with the current official tests for brucellosis as defined in 9 CFR 78.1. Therefore, the reference to the agglutination test applied in accordance with the 1975 Uniform Methods and Rules would be replaced by a reference to the official test as defined in 9 CFR 78.1. Further, individuals other than accredited veterinarians perform such tests. Therefore, this document would expand the application of § 51.9(b) to situations in which any individual performs the official test without instructions from the proper Veterinary Services and State authorities.

#### Miscellaneous

This document would also make certain nonsubstantive changes in the regulations for purposes of clarity.

#### Executive Order 12291 and Regulatory Flexibility Act

This proposed action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of \$100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The number of cattle, bison, and swine owners who receive indemnity in any given year is less than 1 percent of all cattle, bison, and swine owners in the United States, and the amount of indemnity paid out of all kinds is less than \$10 million per year.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Brucellosis.

#### PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, it is proposed to amend the "Animals Destroyed Because of Brucellosis" regulations contained in 9 CFR Part 51 as follows:

1. The authority citation for Part 51 would continue to read:

Authority: 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

#### § 51.1 [Amended]

2. Paragraph (b) of § 51.1 would be amended by changing "USDA" to read "United States Department of Agriculture".

3. Paragraph (c) of § 51.1 would be revised to read:

(c) *Deputy Administrator.* The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other Veterinary Services official to whom authority is delegated to act in this or her stead.

4. Paragraph (d) of § 51.1 would be amended by changing the phrase "Veterinary official" to read "veterinary official" and "USDA" to read "United States Department of Agriculture".

5. Paragraph (e) of § 51.1 would be revised to read:

(e) *Veterinary Services representative.* An individual employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the function involved.

6. Paragraph (f) of § 51.1 would be revised to read:

(f) *State.* Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

7. Paragraph (g) of § 51.1 would be amended by changing "Accredited Veterinarian" to read "Accredited veterinarian".

8. Paragraph (k) of § 51.1 would be amended by changing "slaughter" to read "slaughtered".

9. Paragraph (l) of § 51.1 would be removed.

10. Paragraph (s) of § 51.1 would be revised to read:

(s) *Brucellosis reactor animal.* Any animal classified as a brucellosis reactor as provided in the definition of official test in § 78.1 of this chapter.

11. In § 51.1, footnote number 1 would be removed.



12. Paragraph (t) of § 51.1 would be revised to read:

(t) *Brucellosis exposed animal.* Except for a brucellosis reactor animal, any animal that: (1) Is part of or has been in contact with a herd known to be affected; or (2) has been in contact with a brucellosis reactor animal for a period of 24 hours or longer; or (3) has been in contact with a brucellosis reactor animal which has aborted, calved or farrowed within the past 30 days, or has a vaginal or uterine discharge.

13. In paragraph (w) of § 51.1 the phrase "of this part" would be removed.

14. Paragraph (y) of § 51.1 would be revised to read:

(y) *State representative.* An individual employed in animal health activities by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

15. The definitions in § 51.1 would be placed in alphabetical order and the paragraph designations deleted.

16. Section 51.1 would be amended by adding, in alphabetical order, the following:

*State animal health official.* The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs in that State.

*Unofficial vaccinate.* Any cattle or bison which have been vaccinated for brucellosis other than in accordance with the provisions for official vaccinates set forth in § 78.1 of this chapter.

#### § 51.3 [Amended]

17. In § 51.3 footnote numbers 2 and 3, and the references thereto, would be renumbered 1 and 2, respectively.

#### § 51.6 [Amended]

18. In § 51.6 footnote numbers 5 and 6 and the references thereto, would be renumbered 1 and 2, respectively.

#### § 51.9 [Amended]

19. In § 51.9 footnote number 1 and the reference thereto would be removed.

20. Paragraph (b) of § 51.9 would be revised to read:

#### § 51.9 Claims not allowed.

(b) If the existence of brucellosis in the animal was determined based on the results of an official test, as defined in § 78.1 of this chapter, and specific

instructions for the administration of the official test had not previously been issued to the individual performing the test by Veterinary Services and the State animal health official.

Done at Washington, D.C., this 30th day of October, 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-26329 Filed 11-5-85; 8:45 am]

BILLING CODE 3410-34-M

## 9 CFR Part 75

[Docket No. 85-069]

### Equine Infectious Anemia; Procedure for Approving Laboratories To Conduct Official Tests

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the regulations in 9 CFR Part 75 to change the procedure for approving laboratories to conduct official tests for equine infectious anemia. The change would require the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, to consult with the State official responsible for the livestock and poultry disease control and eradication programs in the State in which the laboratory is located before approving a laboratory. This action appears to be necessary to ensure that the Deputy Administrator has all relevant information when deciding whether to approve a laboratory. This document also proposes to relieve certain restrictions regarding the interstate movement of reactors to home farms and diagnostic or research facilities which do not appear to be necessary to prevent the interstate dissemination of equine infectious anemia. Further, this document proposes to delete the provision for release of reactors from diagnostic or research facilities when they are determined by a test recognized by USDA to be free of equine infectious anemia. This action appears to be necessary because there are presently no such tests recognized by USDA. Finally, this document proposes to set forth the conditions under which a diagnostic or research facility is granted, denied or withdrawn approval to receive reactors interstate.

**DATE:** Written comments must be received on or before January 6, 1986.

**ADDRESS:** Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director,

Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should indicate that they are in response to Docket N. 85-069. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

#### FOR FURTHER INFORMATION CONTACT:

Dr. C. A. Gipson, Special Diseases Staff, VS, APHIS, USDA, Room 826, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8321.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR Part 75 (referred to below as the regulations) include provisions concerning the interstate movement of horses, asses, ponies, mules, and zebras found to be affected with equine infectious anemia (referred to below as EIA), also known as swamp fever. The regulations provide that the Agar gel immuno-diffusion test is the official test for determining whether horses, asses, ponies, mules, and zebras are affected with EIA. The official test for EIA is required to be conducted in a laboratory approved by the Deputy Administrator, Veterinary Services. Under the definition of "Official test" in present § 75.4(b), a laboratory will be approved by the Deputy Administrator after the Deputy Administrator has determined that the laboratory:

(i) Has adequately trained technical personnel assigned to conduct the test, (ii) uses USDA licensed antigen, (iii) follows standard test protocol, (iv) meets check test proficiency requirements, and (v) reports all test results to State and Federal animal health officials.

This document proposes to indicate where the standards for approval for laboratories may be obtained and to specify that the training, protocols and check test proficiency requirements are prescribed by this Department's National Veterinary Services Laboratory at Ames, Iowa.

This document also proposes to add a provision whereby the Deputy Administrator shall consult with the State animal health official before granting approval to laboratories to conduct official EIA tests.

This provision appears to be necessary to ensure that the Deputy Administrator has all relevant information when deciding whether to approve a laboratory.

Because State animal health officials often work with laboratories located



within their respective States, they are often in a better position than the Deputy Administrator to determine whether a specific laboratory meets the standards presently necessary for approval to conduct the official EIA test.

It has sometimes occurred, for example, that a laboratory has conducted "screening," i.e., performing a test for a disease and giving test results to the owner of the animal but not to appropriate State or Federal officials. Because of the close working relationship between the State officials and the laboratory, State officials are often better able to learn that a laboratory is involved in "Screening" than is the Deputy Administrator. In other cases State officials have knowledge of laboratories that do not follow standard test protocols or that otherwise follow practices that render them unsuitable to perform official EIA tests.

The proposed provision would provide a mechanism whereby the Deputy Administrator would not grant approval to a laboratory without first consulting with the State animal health official in the State in which the laboratory is located. This would help ensure that all relevant facts about the laboratory are considered, before the Deputy Administrator makes a determination that a laboratory meets or does not meet the standards necessary for approval.

Further, this document would amend the requirements for the interstate movement of reactors to approved diagnostic or research facilities contained in present § 75.4(c)(2). Presently, reactors are required to be accompanied interstate to such diagnostic or research facilities by a permit from the appropriate livestock sanitary official in the State of destination. The present regulations do not define a permit. Further, some state officials on occasion orally authorize such movements. Therefore, this document would amend the current requirements to provide that, among other things, a reactor may be moved interstate to a diagnostic or research facility only after the State animal health official in the State of destination has authorized the movement of the reactor to that State and has so informed the individual issuing the certificate. The Department believes that such a requirement would be sufficient to insure that the State animal health official knows of and agrees to the impending movement of a reactor into the State.

This document also removes from present § 75.4(c)(2) the provision that allows the release of a reactor from

quarantine at a diagnostic or research facility if the animal is determined free of equine infectious anemia through tests recognized by the United States Department of Agriculture. This provision is removed because there are presently no recognized tests which will determine a reactor to be free of the disease, and therefore no such releases of reactors from quarantine at diagnostic or research facilities can presently be authorized.

This document would also set forth the conditions under which a diagnostic or research facility is granted, denied or withdrawn approval to receive reactors moved interstate under present § 75.4(c)(2).

Further, this document would also relieve a restriction presently imposed in § 75.4(c)(3). Present § 75.4(c)(3) provides regulations under which a reactor may be moved interstate to its home farm. One of the requirements presently set forth in that section is that the reactor be "disclosed on an official test conducted in a State other than the State in which the home farm of the reactor is located". This proposal would remove this requirement, since the risk of the interstate spread of equine infectious anemia by a reactor moving interstate to a home farm is not affected by the location at which an official test is conducted.

#### Miscellaneous

This document also makes certain nonsubstantive changes in the regulations for purposes of clarity.

#### Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of \$100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is not anticipated that a significant number of laboratories would be affected by adoption of this proposal. In addition, conducting official EIA tests is not a substantial economic activity of any laboratory in the United States. Therefore, the Administrator of the Animal and Plant Health Inspection

Service has determined that the adoption of the proposal would not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 9 CFR Part 75

Animal Diseases, Horses, Quarantine, Transportation, Equine, Dourine, Equine infectious anemia, Contagious equine metritis.

#### PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

Accordingly, it is proposed to amend the regulations in 9 CFR Part 75 as follows:

1. The authority citation for Part 75 would continue to read as follows:

Authority: 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 75.4 would be revised as follows: (The undesignated center heading is reprinted without charge for the convenience of the reader).

#### Equine Infectious Anemia (Swamp Fever)

##### § 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities and research facilities.

(a) *Definitions.* For the purpose of this section, the following terms have the meanings set forth in this paragraph.

*Accredited veterinarian.* An accredited veterinarian as defined in Part 160 of this chapter.

*Certificate.* An official document issued by a State representative, Veterinary Services representative, or an accredited veterinarian at the point of origin of the interstate movement on which are listed: (1) The description, including age, breed, color, sex, and distinctive markings when present (such as brands, tattoos, scars or blemishes), of each reactor to be moved; (2) the number of reactors covered by the document; (3) the purpose for which the reactors are to be moved; (4) the points of origin and destinations; (5) the consignor; and (6) the consignee; and which states that each reactor identified on the certificate meets the requirements of § 75.4(b).

*Deputy Administrator.* The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other Veterinary Services official to whom authority is delegated to act for the Deputy Administrator.

*Officially identified.* The permanent identification of a reactor using the National Uniform Tag code number



assigned by the United States Department of Agriculture to the State in which the reactor was tested, followed by the letter "A",<sup>1</sup> which markings shall be permanently applied to the reactor by a Veterinary Services representative, State representative or accredited veterinarian who shall use for the purpose a hot iron or chemical brand, freezemarking or a lip tattoo. If hot iron or chemical branding or freezemarking is used, the markings shall be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. If a lip tattoo is used, each character of the tattoo shall be not less than one inch high and three-fourths of an inch wide and shall be applied to the inside surface of the upper lip of the reactor.

**Official test.** The Agar gel immunodiffusion test for equine infectious anemia conducted in a laboratory approved by the Deputy Administrator.

**Reactor.** Any horse, ass, mule, pony or zebra which is subjected to an official test and found positive.

**State.** Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

**State animal health official.** The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs.

**State representative.** An individual employed in animal health activities of a State or a State's political subdivision, who is authorized by that State to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

**Veterinarian in Charge.** The veterinary official of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Deputy Administrator to supervise and perform the animal health activities of the Animal and Plant Health Inspection Service in the State concerned.

**Veterinary Services representative.** An individual employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the function involved.

(b) **Interstate Movement.** No reactor may be moved interstate unless the reactor is officially indentified, is accompanied by a certificate, and meets the conditions of either paragraph (b)(1), (b)(2), or (b)(3) of this section:

(1) The reactor is moved interstate, for immediate slaughter, either to a Federally inspected slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State-inspected slaughtering establishment that has inspection by a State representative at time of slaughter; or

(2) The reactor is moved interstate to a diagnostic or research facility after the individual issuing the certificate has consulted with the State animal health official in the State of destination and has determined that the reactor to be moved interstate will be maintained in isolation sufficient to prevent the transmission of equine infectious anemia to other horses, asses, ponies, mules, or zebras, and will remain quarantined under State authority at the diagnostic or research facility until natural death, slaughter, or until disposed of by euthanasia; or

(3) The reactor is moved interstate to its home farm, after the individual issuing the certificate has consulted with the State animal health official in the State of destination and has determined that the reactor to be moved interstate will be maintained in isolation sufficient to prevent the transmission of equine infectious anemia to other horses, asses, ponies, mules, or zebras, and will remain quarantined under State authority on the reactor's home farm until natural death, slaughter, or until disposed of by euthanasia.

(c) **Approval of Laboratories and Diagnostic or Research Facilities.** (1) The Deputy Administrator will approve laboratories to conduct the official test only after consulting with the State animal health official in the State in which the laboratory is located and after determining that the laboratory: (i) Has technical personnel assigned to conduct the official test who have received training prescribed by the National Veterinary Services Laboratory; (ii) uses United States Department of Agriculture licensed antigen; (iii) follows standard test protocol prescribed by the National Veterinary Services Laboratory; (iv) meets check test proficiency requirements prescribed by the National Veterinary Services Laboratory; and (v) reports all official test results to the

State animal health official and the Veterinarian in Charge.<sup>2</sup>

(2) The Deputy Administrator will approve diagnostic or research facilities to which reactors may be moved interstate under paragraph (b)(2) of this section, after a determination by the Deputy Administrator that the facility has facilities and employs procedures which are adequate to prevent the transmissions of equine infectious anemia from reactors to other equine animals.<sup>3</sup>

(d) **Denial and Withdrawal of Approval of Laboratories and Diagnostic or Research Facilities.** The Deputy Administrator may deny or withdraw approval of any laboratory to conduct the official test, or of any diagnostic or research facility to receive reactors moved interstate, upon a determination that the laboratory or diagnostic or research facility does not meet the criteria for approval under paragraph (c) of this section.

(1) In the case of a denial, the operator of the laboratory or facility will be informed of the reasons for denial and, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action in accordance with rules of practice which shall be adopted for the proceeding.

(2) In the case of withdrawal, before such action is taken, the operator of the laboratory or facility will be informed of the reasons for the proposed withdrawal and, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action in accordance with rules of practice which shall be adopted for the proceeding. However, withdrawal shall become effective pending final determination in the proceeding when the Deputy Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the laboratory or facility. In the event of oral notification, written confirmation shall

<sup>1</sup> Training requirements, standard test protocols, and check test proficiency requirements prescribed by the National Veterinary Services Laboratory, and the names and addresses of approved laboratories can be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Center Building, Hyattsville, Maryland 20782.

<sup>2</sup> Facilities and procedures which are adequate to prevent the transmission of equine infectious anemia, and the names and addresses of approved diagnostic or research facilities, can be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Center Building, Hyattsville, Maryland 20782.

<sup>3</sup> Information as to the National Uniform Tag code number system can be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Center Building, Hyattsville, Maryland 20782.



be given as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Deputy Administrator.

(3) Approval for a laboratory to conduct the official test will be automatically withdrawn by the Deputy Administrator when the operator of the approved laboratory notifies the National Veterinary Services Laboratory in Ames, Iowa, in writing, that the laboratory no longer conducts the official test.

(4) Approval for a diagnostic or research facility to receive reactors moved interstate will be automatically withdrawn by the Deputy Administrator when the operator of the approved diagnostic or research facility notifies the Deputy Administrator, in writing, that the diagnostic or research facility no longer receives reactors moved interstate.

Done at Washington, D.C., this 30th day of October 1985.

G. J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-26328 Filed 11-5-85; 8:45 am]

BILLING CODE 3410-34-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 444

#### Trade Regulation Rule; Credit Practices; Request for Exemption by State of Wisconsin

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for exemption from trade regulation rule by the State of Wisconsin.

**SUMMARY:** The Federal Trade Commission hereby publishes for comment a request from the State of Wisconsin for an exemption from the Commission's trade regulation rule on Credit Practices, 16 CFR Part 444 (1984) (Credit Practices Rule).

**DATE:** Comments are invited and must be received on or before January 6, 1986.

**ADDRESS:** Comments on the Request for Exemption of the State of Wisconsin should be sent to: Secretary, Federal Trade Commission, Washington, D.C. 20580

Comments should be captioned: "Wisconsin Petition for Statewide Exemption from the Credit Practices Rule."

Copies of the Petition can be obtained from the Public Reference Room, Room 130, Federal Trade Commission, 6th and

Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 523-3598.

In addition, the Petition may also be obtained from the Office of the Commissioner of Banking, P.O. Box 7876, Madison, Wisconsin 53707 or by calling Robert Patrick, General Counsel at (608) 266-1621.

**FOR FURTHER INFORMATION CONTACT:** Ruth R. Amberg or Sandra M. Wilmore, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 724-1187 or (202) 724-1100.

**SUPPLEMENTARY INFORMATION:** The Credit Practices Rule states that it is unfair for a creditor in a transaction subject to the Rule<sup>1</sup> to include in a contract a provision that constitutes or contains a confession of judgment or similar waiver; a waiver of exemptions; an assignment of wages (with certain limited exceptions); or a non-purchase money security interest in certain types of household goods. The Rule also states that it is deceptive for a creditor to misrepresent a cosigner's liability and unfair for a creditor to fail to disclose the cosigner's liability. The Rule requires that a particular notice be provided to potential cosigners and states that a creditor complying with that disclosure provision does not violate the prohibition against unfair and deceptive statements concerning the cosigner's liability. The Rule states that it is an unfair practice for a creditor to assess multiple late fees when the only delinquency is the failure to pay a previously assessed late fee.

The Credit Practices Rule provides (Rule section 444.5, 16 CFR 444.5) that if a state applies for an exemption from a provision of the Rule, such exemption will be granted if the Commission determines that: (1) There is in effect a state requirement or prohibition that applies to any transaction to which a provision of the Credit Practices Rule applies; and (2) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the Rule's provision. Such an exemption will continue for so long as the state effectively administers and enforces its law. The result of the exemption is that

<sup>1</sup> The Federal Trade Commission does not have jurisdiction over banks or federally-chartered or insured savings and loan associations, so transactions by those creditors are not subject to the Rule. However, the Federal Reserve Board and the Federal Home Loan Bank Board have adopted substantially similar rules for those institutions. These rules become effective January 1, 1986. The FRB's rule and the FHLBB's rule may be found at 50 FR 11685 (April 29, 1985) and 50 FR 19325 (May 8, 1985), respectively.

the exempted provision of the Credit Practices Rule is not in effect in that State.<sup>2</sup>

The State of Wisconsin asserts that the Wisconsin Consumer Act and the State enforcement scheme for that Act meet the standards for exemption contained in the Rule and requests an exemption on that basis.

The Commission has determined to published the exemption request for public comment for 60 days to allow the Commission to receive information from the public on the question whether the state requirements meet the Commission's criteria for exemption.

Call for comment: Interested persons are invited to comment on the State of Wisconsin's request for an exemption, which is summarized below. The Commission staff is particularly interested in receiving comments on certain issues identified below. However, comments are invited on any aspect of the Wisconsin petition. At the end of the comment period, the Commission staff will review the comments received and make a recommendation to the Commission as to whether the requested exemption should be granted. The Commission will publish its decision to grant or deny the exemption.

As set forth in § 444.5, the Commission will evaluate, in the context of an exemption proceeding, appropriate state petitions for exemption to determine whether the level of protection to consumers under the state law is substantially equivalent to the Credit Practices Rule and whether the state law is administered and enforced effectively. As explained in the staff guidelines, the exemption proceeding will be conducted pursuant to § 1.16 of the Commission's Rules of Practice.<sup>3</sup>

As indicated in the Rule's Statement of Basis and Purpose, the requirement in § 444.5 that a comparable state requirement be "substantially equivalent" to the Commission's rule provision does not, in the Commission's

<sup>2</sup> To assist the states in applying for exemptions, the FTC has published staff guidelines for exemption proceedings under the Credit Practices Rule at 50 FR 19335, May 8, 1985.

<sup>3</sup> The staff guidelines also state that additional procedures for public participation may be scheduled if necessary for a full and fair presentation of significant factual issues, such as when cross-examination is necessary. (A determination as to whether such procedures will be necessary with respect to this exemption request has not been made at this time.) The guidelines list the information that should be contained in any request for such additional procedures. Any such request should be sent to the Office of the Secretary, Federal Trade Commission, Washington, D.C. 20580.



view, require that the state requirement mirror exactly the Commission provision. Any differences that exist, however, should be so minor as not to deprive consumers of the level of protection guaranteed by the Commission Rule nor to complicate significantly compliance by interstate creditors. Other factors that will be considered by the Commission in determining whether an exemption is warranted include the resources committed by the state to enforce its provisions, and the extent of any private rights of action available to aggrieved consumers 49 FR 7740, 7783.

#### Contents of the Wisconsin Submission

Wisconsin has provided a copy of the relevant state statutes and a narrative statement comparing the state law with the corresponding provisions of the Credit Practices Rule. The statement also explains how state law and the Rule would apply to the same transaction. The Annual Reports of the Banking Commission for each of the past three years are also provided. They contain summaries of cases brought under the Wisconsin Consumer Act and show what the Banking Commission has done to enforce the Wisconsin Consumer Act during the last three years. The petition is signed by the Commissioner of Banking, who is the Administrator of the Wisconsin Consumer Act.

#### The Wisconsin Consumer Act as Described in the Submission

##### A. General

1. *Coverage.* Sections 421.301 (10), (20), and (30) of the Wisconsin Consumer Act provide that an extension of consumer credit to which the Wisconsin Consumer Act applies includes any sale, lease, or loan with a consumer on which a finance charge is or may be assessed, or which is payable in more than four installments. The Rule applies to an agreement between a consumer and a lender or retail installment seller. The Rule's definition of a retail installment seller includes a person who sells goods or services to a consumer pursuant to a lease-purchase arrangement. The Rule defines a debt as money that is due or alleged to be due from one to another and does not require that a covered obligation be subject to a finance charge or payable in more than four installments.

The Wisconsin Consumer Act covers agricultural credit, as well as credit for personal, family, or household use and applies only to transactions in which the amount financed is less than \$25,000. The Rule covers credit for personal,

family, or household use and sets no dollar limit on covered transactions. (See section 421.202(6), WIS. STAT.) Public comment is sought on the degree to which the differences in coverage between state law and the Rule affect the level of protection afforded by state law.

2. *Enforcement.* The Wisconsin Consumer Act is administered by the Commissioner of Banking. Among his functions, the Commissioner is authorized to receive and act on complaints, adopt administrative rules, review and approve contract forms, and commence actions through the Department of Justice. Administration of the Act includes the direct examination of certain creditors by a field staff of five examiners. In addition, there are two consumer credit examiners who handle complaints received against creditors not subject to routine examinations.

From March 1, 1981 to February 28, 1982, according to its annual report, the Wisconsin Banking Commission reviewed 546 complaints under the Wisconsin Consumer Act of which one pertained to the taking of a security interest in exempt property. Others did not appear to pertain to practices covered by the Rule. During that time period, the Wisconsin Banking Commission received 112 complaints pertaining to practices not covered by the Wisconsin Consumer Act. As summarized, the practices complained of do not appear to be covered by the Rule either. During that same time period, the state completed seven enforcement actions involving alleged violations of the Act. Three of the seven charged the creditor with the assessment of excessive delinquency charges, but it is not clear from the summaries provided whether the excessive charges included the pyramiding of late charges, a practice prohibited by the Rule. Other allegations did not appear to involve practices that would also violate the Act.

From March 1, 1982 to February 28, 1983, the Wisconsin Banking Commission received 393 complaints of violations of the Wisconsin Consumer Act including one complaint involving the use of a prohibited confession of judgment, a practice that would violate the Rule. Four other complaints involved excessive delinquency charges which, if the excessive charges included the pyramiding of late fees, would violate the Rule. The Wisconsin Banking Commission also received 105 complaints of practices not covered by the Wisconsin Consumer Act which do not appear to be covered by the Rule

either. Enforcement proceedings brought under the Act during that time period included three completed cases, two of which alleged contracting for delinquency charges in excess of that permitted by the statute. Again, if the excessive charges included the pyramiding of late fees, that would also violate the Rule. Other practices alleged were not covered by the Rule.

From March 1, 1983 to February 29, 1984, the Wisconsin Banking Commission processed 364 complaints of violations of the Act of which one involved the failure to provide the required notice to a cosigner, a practice that would also violate the Rule. Seven other complaints involved excessive delinquency charges. The Banking Commission received 171 complaints regarding practices not covered by the Act. The practices complained of do not appear to be covered by the Rule. Enforcement proceedings brought during that time period included two completed cases, neither of which appeared to involve practices covered by the Rule. The state also had four cases pending during that time period, two of which included allegations of contracting for excessive delinquency charges, a practice that would violate the Rule if those charges included the pyramiding of late fees.

The Wisconsin Banking Commissioner has the authority to adopt administrative rules to carry out the purposes of the Act, and has done so. Rules under the Wisconsin Act that are relevant to the Credit Practices Rule are: A rule describing language to be used in making an assignment of wages revocable; a rule stating that a purchase money security interest may cover repairs and replacement parts for the item purchased; and rules modifying the notice given to obligors.

To assist creditors in designing forms that comply with the Act, the Wisconsin Banking Commissioner reviews forms used in consumer credit transactions. From the time that the Wisconsin Consumer Act became effective through the time covered by the 1984 report that we received, 760 business and trade associations had submitted forms for approval. Approval of a form or procedure by the Banking Commission protects a creditor from potential civil penalties. The Wisconsin petition asserts that this examination and approval procedure results in a high level of compliance with the Act.

Public comment is sought on whether the state has demonstrated that it administers and enforces the state law effectively so as to afford a level of



protection equivalent to that afforded by the Rule.

3. *Remedies.* The damages provided for individual violations of the Wisconsin law are generally either \$100, twice the finance charge, or the amount of the consumer's actual damages.<sup>4</sup> Furthermore, under Wisconsin law, certain nonconforming obligations are void or unenforceable. In addition to the private right of action under the Wisconsin law, the state may recover civil penalties of \$100 to \$1,000 for negligent violation of the Act, and penalties of \$1,000 to \$10,000 for willful and knowing violations. Either the state or an aggrieved consumer may sue for an injunction or declaratory relief. Either the state or any consumer affected by a violation may bring a class action on behalf of all persons similarly situated for actual damages, penalty damages not to exceed \$100,000, reasonable attorney's fees, and other relief to which consumers are entitled under specific provisions of the Act.

The Rule provides for civil penalties of up to \$10,000 per violation. However, the Rule does not make a nonconforming obligation void or unenforceable by the creditor and contains no private right of action. Public comment is sought on the degree to which these differences in penalties provided for violations of state law and the Rule affect the level of protection afforded by state law.

#### B. Confession of Judgment

Section 422.405 of the Wisconsin Act provides that a creditor may not obtain from a consumer any authorization that would enable the creditor to confess judgment on behalf of the consumer. If a contract contains such a prohibited provision, the consumer may void the contract, may retain the goods or services provided without any further obligation to pay, and may obtain a refund of all monies paid to the creditor. The Rule prohibits a creditor from using in a consumer credit contract a confession of judgment or any other waiver of the right to notice and the opportunity to be heard in the event of suit or legal process based on the contract. Public comment is sought on the degree to which the difference in available remedies under the Act and

the Rule affects the level of protection afforded by state law.

#### C. Waiver of Exemptions

Wisconsin law exempts certain real and personal property and a portion of a debtor's wages from execution. (See sections 421.06, 425.06, and 425.107(1)(e), WIS. STAT.) Wisconsin law also provides that it is an unconscionable practice to include in a contract a provision that requires the consumer to waive legal rights. The state contends that it would be unconscionable for a creditor to include in its contract a waiver of exemptions clause, but waivers of exemptions are not expressly prohibited under Wisconsin law as they are under the Rule. An unconscionable contract provision is not enforceable in Wisconsin, and a creditor who includes such a provision in a contract is, furthermore, subject to penalty damages of \$100 and any actual damages sustained by the consumer. Public comment is sought on the degree to which differences in coverage and remedies affect the level of protection afforded by state law.

#### D. Wage Assignments

Section 422.404 of the Wisconsin Consumer Act prohibits wage assignments unless revocable, and requires that a consumer be given notice of the assignment's revocability. The Rule prohibits wage assignments unless revocable, but does not require a notice of revocability. While Wisconsin law does not expressly address payroll deductions, the state indicates in its submission that such a payment mechanism would be permissible only if the consumer may revoke it at any time. The Rule permits certain payroll deductions, whether or not they are revocable. The state contends in its submission that the Wisconsin provision on wage assignments offers greater protection than the Rule does. A creditor who violates the Wisconsin provision must pay damages of twice the finance charge or the consumer's actual damages, whichever is greater, in a private suit. Public comment is sought on the degree to which differences in coverage and remedies affect the level of protection afforded by state law.

#### E. Household Goods Security Interests

Section 422.417 of the Wisconsin law provides that, in general, a seller may take only a purchase money security interest. If the extension of credit is in the amount of \$500 or more, a seller may take a security interest in goods upon

which the property sold is installed or to which it is annexed. The creditor may also take a security interest in goods upon which any services that are the subject of the sale are performed. A lender that is not a seller may take a non-purchase money security interest, except in certain items.

The Rule prohibits the taking of a non-purchase money security interest in certain household items. The list of items that may not be offered as security in Wisconsin is somewhat different from the Rule's definition of household goods. There is no "personal effects" category in the Wisconsin law as there is in the Rule. In addition, the Wisconsin law does not exclude from the items that may be taken as security, as the Rule does, a television; china; appliances (other than a refrigerator, heating stove and cooking stove); or furniture (other than a dining table with chairs, beds, and a couch with chairs).

If a prohibited security interest is taken, under Wisconsin law, the consumer may sue to obtain twice the amount of the finance charge or actual damages, whichever is greater. Public comment is sought on the degree to which differences in the list of household items protected by the Wisconsin Act and the Rule—as well as other differences in coverage or in remedies—affect the level of protection afforded by state law.

#### F. Cosigner Provisions

The Rule prohibits a creditor from misrepresenting the nature and extent of a cosigner's liability or failing to inform the cosigner prior to the time that the agreement creating the cosigner's liability is executed of the nature of that liability. The Rule requires that a particular disclosure be provided to a consumer prior to the time that the consumer becomes obligated, and states that a creditor providing that disclosure does not violate the prohibition against misrepresenting or failing to inform the cosigner of his or her liability.

The Wisconsin notice and the notice required by the Rule are similar but not identical. The notice required by the Rule states: (1) That the creditor can collect from the cosigner without first trying to collect from the borrower; (2) that the notice is not the contract that makes the cosigner liable; (3) that the same collection remedies may be used against the cosigner as against the borrower; (4) that if the debt goes into default that fact could become a part of the cosigner's credit history; and (5) that

<sup>4</sup>The specific remedies available to a consumer for violations of the Wisconsin law provisions that correspond to the provision of the Rule are discussed in the provision-by-provision analysis below.



the cosigner should think carefully before becoming obligated.

Section 422.305 of the Wisconsin law provides that a cosigner must receive a notice called "An Explanation of Personal Obligation" and a copy of all relevant documents. The Explanation describes: (1) The cosigner's obligation to pay even though the cosigner may not be entitled to any of the goods or services or the loan provided to the borrower; (2) the fact that the cosigner may be sued even though the borrower may be able to pay; (3) the fact that the notice is not the agreement that makes the cosigner liable; and (4) the fact the cosigner is entitled to a free copy of any document the cosigner signs endorsing the transaction. The Rule does not require that the cosigner be provided with documents evidencing the obligation as Wisconsin law does.

Wisconsin law prohibits false, misleading, or deceptive statements generally. The state contends that this prohibition covers misrepresenting or failing to disclose a cosigner's liability although misrepresenting or failing to disclose a cosigner's liability is not specifically prohibited by Wisconsin law as it is by the Rule. The state law does not provide that a creditor who furnishes the cosigner notice does not violate the prohibition against misrepresenting or failing to disclose a cosigner's liability, as the Rule does.

Under Wisconsin law, a cosigner who does not receive the required documentation may sue the creditor and recover twice the amount of the finance charge or actual damages, whichever is greater. Public comment is sought on the degree to which these differences in the required notice and other relevant provisions affect the level of protection afforded by state law.

#### G. Late Charges

Sections 422.202(2m)(a) and 203(2) of the Wisconsin law prohibit the pyramiding of late charges as the Rule does. A creditor who violates the state's prohibition is subject to damages of the greater of twice the finance charge or the consumer's actual damages. Public comment is sought on the degree to which the difference in available remedies affects the level of protection afforded by state law.

By direction of the Commission.

Issued: October 30, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85-26307 Filed 11-5-85; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF STATE

### Bureau of Consular Affairs

#### 22 CFR Parts 41 and 42

[SD-192]

#### Visas; Documentation of Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Department of State.

ACTION: Notice of Proposed Rulemaking.

**SUMMARY:** The Department proposes to amend 22 CFR Parts 41 and 42 to reflect new Immigration and Naturalization Service's regulations relating to the filing and approval of blanket petitions, to provide for refusal by a consular officer of an (L) visa to an alien applying for such visa as the beneficiary of a blanket petition approved under the regulations of the Immigration and Naturalization Service when the consular officer is not satisfied that the alien qualifies as a manager or executive under the provisions of section 101(a)(15)(L) of the Act, to substitute the word "person" for the word "woman" in the first sentence of appropriate sections, to increase to \$100,000 the minimum monetary investment an alien must make in an enterprise in the United States in order to establish exemption from the labor certification requirement of section 212(a)(14) of the Immigration and Nationality Act. It also proposes to make changes to § 41.91(a)(17) and 42.91(a)(17) in order to conform with section 4(1) of the Immigration and Nationality Act Amendments of 1981 and the Immigration and Naturalization Service's subsequent regulations to implement the Act of December 29, 1981 (95 Stat. 1612).

**DATE:** Comments must be received in writing on or before December 15, 1985 in order to be considered.

**ADDRESS:** Written comments should be submitted to the Director, Office of Legislation, Regulations and Advisory Assistance, Visa Services, Bureau of Consular Affairs, Department of State, Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Guida Evans-Magher, Legislation and Regulations Division (202) 632-2907.

**SUPPLEMENTARY INFORMATION:** Section 41.07(b) establishes a regulatory procedure to be followed when a consular officer is not satisfied that an alien applying for a visa as the beneficiary of an individual petition approved by the Immigration and Naturalization Service is qualified under

section 101(a)(15)(L) of the Act. The regulations of the Service currently provide for the filing and approval of blanket petitions under the provisions of section 101(a)(15)(L) of the Act without the naming of any alien as beneficiary. The regulations also delegate to consular officers the authority to determine the eligibility of individual aliens applying for visas as executives or managers under approved blanket petitions. The proposed changes would add blanket petitions provisions in paragraph (a)(iii) and in new paragraph (c) delegate to consular officers regulatory authority for refusing (L) visas to aliens who claim to be beneficiaries under an approved blanket petition but who are unable to satisfy the consular officer of their managerial or executive qualifications. Sections 41.91(a)(12)(i) and 42.91(a)(12)(i) define the term "prostitute" as a woman given to promiscuous intercourse for hire. The proposed amendments define the term as any "person" who is so engaged thus making visa ineligibility under section 212(a)(12) of the Act more generally applicable to any visa applicant who has engaged or will engage in conduct proscribed by that section.

A proposed change in § 42.91(a)(14)(ii)(d) would increase the current \$40,000 minimum monetary investment to at least \$100,000. The proposed increase in the minimum monetary investment an alien is required to invest in an enterprise in the United States for the purpose of establishing an exemption from the labor certification requirement, is based on the cumulative inflation that has occurred since the 1976 amendment of the investment amount (41 FR 37474, September 7, 1976) and is considered to reflect present realities for establishing a viable ongoing enterprise.

The proposed amendments to §§ 41.91(a)(17) and 42.91(a)(17) are in conformity with the Immigration and Naturalization Service's construction of section 4(1) of the Immigration and Nationality Act Amendments of 1981. The Service has construed the 1981 Amendments as excepting from the application for readmission requirement of section 212(a)(17) of the Act only those aliens, subject to potential exclusion under that section, who have remained outside the United States for five successive years since the last deportation or removal.

The Department does not consider this rule to be a major rule under Executive Order 12291 and does not expect this rule to have a significant impact on a substantial number of small



entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 22 CFR Parts 41 and 42

Aliens, Nonimmigrants, Immigrants, Ineligible classes, Intracompany transferees.

Accordingly, it is proposed to amend 22 CFR Parts 41 and 42 as follows:

#### PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 187, 8 U.S.C. 1104 and 109(b)(1), 91 Stat. 847, unless otherwise noted.

2. Section 41.67 is amended by revising paragraph (a)(1)(iii), by adding paragraph (a)(1)(iv) and by adding a new paragraph (c) to read as follows:

#### § 41.67 Executives, managers, and specialists (intracompany transferees).

(a) An alien shall be classifiable under the provisions of section 10(a)(15)(L) of the Act if—

- (1) . . .
- (iii) the alien shall have presented to the consular officer official confirmation of the approval of an individual petition according such classification or confirmation of extension of the alien's authorized stay in such classification; or
- (iv) the alien shall have presented an approved blanket petition or a notification of approval listing only those intracompany relationships and positions which were found to qualify under section 101(a)(15)(L) of the Act; or . . .

(c) The consular officer shall refuse issuance of a visa if the documentation presented by an alien applying as an executive or managerial beneficiary of a blanket petition approved by the Immigration and Naturalization Service under the provisions of section 101(a)(15)(L) does not establish to the satisfaction of the consular officer that (1) the alien has been continuously employed by the same employer, or an affiliate or subsidiary thereof, for the one year immediately preceding the application for the (L) visa; or (2) the alien is qualified to fill an executive or managerial position.

3. In § 41.91(a)(12)(i) the word "woman" in the first sentence is changed to the word "person".

4. Section 41.91(a)(17) is revised to read:

#### § 41.91 Aliens ineligible to receive visas.

(a) . . .

(17) *Aliens arrested and deported or removed from the United States.* An alien who was arrested and deported from the United States, or who was removed from the United States as stated in section 212(a)(17) of the Act shall not be issued a visa unless the alien has remained outside the United States for at least five successive years following the last deportation or removal or has obtained permission from the Immigration and Naturalization Service to reapply for admission to the United States.

#### PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for Part 42 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 187, 8 U.S.C. 1104 and 109(b)(1), 91 Stat. 847, unless otherwise noted.

2. In § 42.91(a)(12)(i) the word "woman" in the first sentence is changed to the word "person".

3. In § 42.91 paragraph (a)(14)(ii)(d) is revised to read:

#### § 42.91 Aliens ineligible to receive visas.

- (a) . . .
- (14) *Aliens entering to perform skilled or unskilled labor.* . . .
- (ii) . . .
- (d) An alien who establishes to the satisfaction of the consular officer that entry into the United States is sought for the purpose of engaging in an enterprise in which the alien has invested, or is actively in the process of investing, capital totaling at least \$100,000, and in which the alien will be a principal manager and will employ at least one person in the United States who is a United States citizen or an alien lawfully admitted for permanent residence, exclusive of the principal alien, and the spouse and children of such principal alien; and . . .

4. Section 42.91(a)(17) is revised to read:

(a) . . .

17. *Aliens arrested and deported or removed from the United States.* An alien who was arrested and deported from the United States, or who was removed from the United States as stated in section 212(a)(17) of the Act shall not be issued a visa unless the alien has remained outside the United States for at least five successive years following the last deportation or removal or has obtained permission

from the Immigration and Naturalization Service to reapply for admission to the United States.

Dated: October 11, 1985.

Michael H. Newlin,  
Acting Assistant Secretary for Consular Affairs.

[FR Doc. 85-26252 Filed 11-5-85; 8:45 am]

BILLING CODE 4710-06-M

#### DEPARTMENT OF THE TREASURY

##### Internal Revenue Service

##### 26 CFR Part 1

[LR-145-84 and LR-216-84]

#### Income Taxes; Substantiation of Certain Deductions and Credits for Business Expenses; Taxation of Fringe Benefits; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of portions of two notices of proposed rulemaking.

SUMMARY: This document withdraws portions of two notices of proposed rulemaking by cross reference to temporary regulations published in the Federal Register for February 20, 1985 (50 FR 7071 and 7073), relating to the requirement to substantiate certain deductions and credits with "adequate contemporaneous records" and to the taxation of fringe benefits. The text of temporary income tax regulations under sections 132 and 274 served as the comment document for the notices of proposed rulemaking. Changes to the applicable tax law were made by Pub. L. 99-44, Repeal of Contemporaneous Recordkeeping Requirements, that made, *inter alia*, sections of the temporary regulations ineffective. In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service, therefore, is removing portions of those temporary regulations. This document withdraws those portions of the notices of proposed rulemaking that pertain to the removed temporary regulations.

DATE: The withdrawal of portions of the two notices of proposed rulemaking is effective for taxable years beginning after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Michel A. Dazé, (202-566-3829) or Annette J. Guarisco (202-566-3918) of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111



Constitution Ave., NW, Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 179 and 531 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 718 and 877) (the 1984 Act) made various amendments to Code sections 61, 274, 3121, 3231, 3306, 3401, and 3501, and added new Code sections 132, 280F, and 4977. Temporary regulations published in the Federal Register on October 24, 1984 (49 FR 42701) amended the Income Tax Regulations (26 CFR Part 1) to reflect amendments to section 274(d) of the Internal Revenue Code, relating to substantiation requirements, and the addition of section 280F to the Code, relating to the limitations on cost recovery deductions and the investment tax credit for certain property. Other temporary regulations published in the Federal Register for January 7, 1985 (50 FR 747) amended Parts 1, 31, and 54 of Title 26 of the Code of Federal Regulations, to reflect other amendments to the Code by the 1984 Act relating to the taxation of fringe benefits. Amendments to both sets of temporary regulations and a new temporary regulation relating to the substantiation requirements were published in the Federal Register for February 20, 1985 (50 FR 7038).

Section 1(a) of Pub. L. 99-44, Repeal of Contemporaneous Recordkeeping Requirements (the 1985 Act), amended section 274(d) and section 1(c) of the same law made ineffective any regulations issued to carry out certain of the amendments made by the 1984 Act. In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is removing those sections of the temporary regulations that are no longer effective. Because the text of the temporary regulations served as the comment document for two notices of proposed rulemaking, the portions of the notices of proposed rulemaking that pertain to the removed temporary regulations must also be withdrawn. This document has no effect on the portions of the two notices of proposed rulemaking that pertain to the temporary regulations under section 280F or on the temporary income, employment, and excise tax regulations relating to the taxation of fringe benefits that are not removed. For a discussion of the substantiation requirements under section 274(d) and the rules relating to the taxation of fringe benefits that remain in effect, see the preamble to the removal of the temporary regulations contained in the

Rules and Regulations portion of this issue of the Federal Register.

##### Drafting Information

The principal authors of this document are Michel A. Dazé and Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document on matters of both substance and style.

The proposed amendments to 26 CFR Part 1 relating to the "adequate contemporaneous record" requirement and the proposed amendments to 26 CFR Part 1 that would have conformed the regulations relating to the taxation of fringe benefits to the "adequate contemporaneous record" requirement, published in the Federal Register for February 20, 1985 (50 FR 7071 and 7073), are hereby withdrawn.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 85-26210 Filed 11-1-85; 8:45 am]

BILLING CODE 4830-01-M

##### 26 CFR Part 1

[LR-216-84]

##### Taxation of Fringe Benefits

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary income tax regulations under section 61 and 132. The temporary regulations under section 61 provide rules for valuation of the computing use of employer-provided vehicles. The temporary regulations under section 132 provide rules relating to working condition fringe exclusions. The text of the temporary regulations serves as the comment document for the notice of proposed rulemaking contained in this document.

**DATES:** Proposed effective date: The regulations are proposed to be effective as of January 1, 1985.

Dates for comments and requests for a public hearing: Written comments and requests for a public hearing must be delivered or mailed by January 6, 1986.

**ADDRESS:** Send comments and requests for a public hearing to Commissioner of Internal Revenue, 1111 Constitution

Ave., NW., Washington, DC 20224  
Attention: CC:LR:T (LR-216-84).

**FOR FURTHER INFORMATION CONTACT:** Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, (202) 566-3918 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations are designed by a "T" following their section citation. The final regulations, which this document proposes to base on those temporary regulations, would amend Part 1 of Title 26 of the Code of Federal Regulations.

Section 61 was amended and section 132 was added to the Internal Revenue Code of 1954 ("Code") by section 531 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 877). Section 274(d) of the Code was amended by section 179 of the Tax Reform Act of 1984 (99 Stat. 494) and section 1(a) of the Repeal of Contemporaneous Recordkeeping Requirements (Pub. L. 99-44, 99 Stat. 77). Because of the relationship between sections 274(d) and 132 of the Code, the temporary regulations under section 132 are amended.

##### Comments and Requests for a Public Hearing

Before these proposed amendments are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying.

A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

The collection of information requirements contained in the temporary regulations have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Comments on those requirements should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on the requirements to OMB also send copies of those comments to the Service.



## Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

## Drafting Information

The principal author of this document is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

## List of Subjects in 26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-26360 Filed 11-1-85; 8:48 am]

BILLING CODE 4830-01-M

## 26 CFR Parts 1 and 602

(LR-145-84)

## Depreciation and Investment Tax Credit for Luxury Automobiles; Limitation When Certain Property is Used for Personal Purposes

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the *Federal Register*, the Internal Revenue Service is issuing temporary income tax regulations under section 274 and amending other temporary regulations under sections 162 and 280F. The temporary regulations under section 274 provide rules for the substantiation of any deduction or credit claimed with respect to traveling away from home, certain entertainment expenditures,

business-related gifts, and "listed property." The amendments to the temporary regulations under section 162 relate to the deductibility of certain expenses incurred by employers and employees with respect to noncash fringe benefits. The amendments to the temporary regulations under section 280F provide new limitations on the deductions of lessees of passenger automobiles. The text of the new and amended temporary regulations serves as the comment document for the notice of proposed rulemaking contained in this document.

**DATES:** *Proposed effective dates:* The regulations under section 162 are proposed to be effective as of January 1, 1985. The regulations under section 274 relating to the substantiation of deductions and credits claimed with respect to certain business expenditures are proposed to be effective generally for taxable years beginning after December 31, 1985. The amendments relating to the limitations on the deductions of lessees of passenger automobiles are proposed to be effective generally for automobiles leased after April 2, 1985.

Dates for comments and requests for a public hearing: Written comments and requests for a public hearing must be delivered or mailed by January 6, 1986.

**ADDRESS:** Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-145-84), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Michel A. Dazé of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (202-566-6456, not a toll-free call).

## SUPPLEMENTARY INFORMATION:

### Background

The temporary regulations published in the Rules and Regulations portion of this issue of the *Federal Register* amend the Income Tax Regulations (26 CFR Part 1) to reflect amendments to section 274 of the Internal Revenue Code of 1954, relating to substantiation requirements, and to section 280F relating to limitations on cost recovery deductions and the investment tax credit allowed for passenger automobiles. The temporary regulations issued under section 274 reflect amendments to section 274(d) by section 179 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 494) and by sections 1(a) and 2 of the Repeal of Contemporaneous Recordkeeping Requirements (Pub. L. 99-44, 99 Stat. 77). The amendments to the temporary

regulations under section 280F reflect amendments to that section by section 4 of Pub. L. 99-44. The preamble to the temporary regulations contains an explanation of the provisions of those regulations. The temporary regulations will remain in effect until superseded by final regulations which are proposed to be based on the temporary regulations.

Before amendment by the Tax Reform Act of 1984 and Pub. L. 99-44, section 274(d) required that any deduction for expenses incurred for (1) traveling away from home, (2) entertainment, amusement, or recreation activities or the use of a facility in connection with those activities, or (3) business-related gifts be substantiated by adequate records or sufficient evidence corroborating a taxpayer's own statement. Section 274(d) did not apply to vehicles when used in local travel. Instead, the more general substantiation standards under section 162 were applicable. As amended, section 274(d) requires, for taxable years beginning after December 31, 1985, that any deduction or credit claimed for the expenses described above and for expenses incurred with respect to "listed property" be substantiated by adequate records or sufficient evidence corroborating a taxpayer's own statement. Section 274(d) will then apply to vehicles used in local travel.

First adopted by Treasury decision in 1962, § 1.274-5 of the Income Tax Regulations reflects the addition of section 274(d) to the Code. Amendments to § 1.274-5 are proposed to conform the regulations to the 1984 Act and to Pub. L. 99-44. For the convenience of taxpayers who must comply with the section 274(d) substantiation requirements, the proposed amendments are incorporated into § 1.274-5 and published in full in the format of a temporary regulation. New material is indicated by underlining.

## Comments and Requests for a Public Hearing

Before these proposed amendments are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying.

Comments are invited, however, on only those portions of new temporary § 1.274-5T that are amendments to § 1.274-5 to reflect the recent legislation. Specifically, comments are invited on the following provisions that are included among those amendments:



Paragraph (b)(6), the elements of an expenditure or use with respect to listed property.

Paragraph (c)(2)(ii)(C), substantiation of business use.

Paragraph (c)(3)(ii), sampling rule for the substantiation of business use.

Paragraph (c)(6)(i)(C), aggregation of business use.

Paragraph (d) (2) and (3), disclosure on tax returns of certain information with respect to the use of listed property.

Paragraph (e), substantiation of working condition fringe exclusions and certain employee deductions, and

Paragraph (k), other vehicles that may be designated as qualified nonpersonal use vehicles.

Comments are also invited on the provisions of § 1.162-25T and § 1.274-6T and the amendments to the temporary regulations under section 280F. Comments have been received previously on the limitations applicable to lessees contained in § 1.280F-5T of those temporary regulations. The comments have pointed out that separate limitations are not applicable to lessees to whom lessors have elected to pass through the investment credit. The Internal Revenue Service intends to issue an announcement in the near future providing separate limitations for these lessees.

In the case of a fleet of vehicles owned or leased by an employer and used by employees in connection with the employer's business, the Service is considering an alternative method for the employer to satisfy its substantiation requirements. An employer would be able to establish the business use of each vehicle in the fleet and the personal use by an employee by a method similar to the following:

(1) The employer would identify a class of at least 100 vehicles that are physically similar and that are used in a similar fashion.

(2) No vehicle in the class would have a fair market value greater than \$16,500.

(3) At the beginning of each taxable year, the employer would select from the class a random sample using accepted sampling techniques.

(4) The sample size would preferably be at least 250 vehicles, or one-half the class in the case of fleets of less than 500 vehicles (but in no event less than 50 vehicles).

(5) The taxpayer would determine the business use of each vehicle in the sample from adequate records maintained for each vehicle, and

(6) The average of the business use of each vehicle in the sample would be the business use of each vehicle in the class.

Comments are invited with respect to this alternative method of satisfying the substantiation requirements of section 274(d).

A public hearing will be held upon written request to the Commissioner by any person who submits written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

The collection of information requirements contained in the temporary regulations have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on the requirements to OMB also send copies of those comments to the Service.

#### Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

#### Drafting Information

The principal author of this document is Michel A. Dazé of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

#### List of Subjects

26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

#### 26 CFR Part 602

Reporting and recordkeeping requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-26359 Filed 11-4-85; 8:49 am]

BILLING CODE 4830-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 81

[A-4-FRL-2919-3]

[GA-009]

#### Designation of Areas for Air Quality Planning Purposes; Redesignation of Ozone Nonattainment Areas in Alabama and Georgia

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

**SUMMARY:** EPA today proposes to approve requests by Alabama and Georgia to redesignate two counties in the Columbus-Phenix City Interstate Air Quality Control Region (AQCR) attainment for ozone. The two counties involved are Russell County, Alabama and Muscogee County, Georgia. The redesignation of the Columbus-Phenix City area to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0 and implementation of an EPA-approved control strategy.

The public is invited to submit written comments on this proposed action.

**DATE:** To be considered, comments must reach us on or before December 6, 1985.

**ADDRESSES:** Written comments should be addressed to Jill Thomas of EPA Region IV's Air Management Branch (see EPA Region IV address below). copies of the materials submitted by Georgia may be examined during normal business hours at the following locations:

Environmental Protection Agency,  
Region IV, Air Management Branch,  
345 Courtland Street, NW., Atlanta,  
Georgia 30365.

Air Protection Branch, Environmental  
Protection Division, Georgia  
Department of Natural Resources, 270  
Washington Street, SW., Atlanta,  
Georgia 30344.

**FOR FURTHER INFORMATION CONTACT:**  
Jill Thomas, Air Management Branch,  
EPA Region IV, at the above address  
and telephone number 404/881-2864 or  
FTS 257-2864.



**SUPPLEMENTARY INFORMATION:** In the March 3, 1978, Federal Register (43 FR 8962) EPA designated 103 major urban areas in the United States as nonattainment for ozone. A major urban area was defined as an area with an urbanized population of 200,000 or greater (U.S. Bureau of Census, 1970). Of the 103 urban areas, 97 experienced oxidant violations based on ambient data. The other six urban areas did not have oxidant ambient air quality monitoring data. Since 97 of 103 major urban areas recorded violations, the six cities without data were presumed to be nonattainment for ozone. Additionally, a comprehensive analysis was performed by OAQPS and other factors were considered by EPA for each of the six urban areas. These analyses substantiated the presumptive nonattainment designation and these areas were required to monitor during the 1978 ozone season to determine the magnitude of their oxidant problem.

Among the six urban areas presumed to be nonattainment for ozone were Russell County, Alabama (Phenix City) and Muscogee County, Georgia (Columbus). The monitoring data obtained during the 1978 ozone season indicated that the Columbus-Phenix City nonattainment designation was correct. Thus, Alabama and Georgia were required to revise their respective state implementation plans (SIP) for ozone. Both States drafted and adopted control strategies based on reduction of volatile organic compound (VOC) emissions from mobile and stationary sources. They showed that the area would achieve the ozone standard by early 1981 through the Federal Motor Vehicle Control Program and through implementation of Group I and Group II VOC Reasonably Available Control Technology (RACT) regulations. EPA approved Alabama's SIP on November 26, 1979, and Georgia's SIP on September 18, 1979.

Alabama and Georgia have requested that EPA change the attainment status of Russell County and Muscogee County, respectively, from nonattainment for ozone to attainment. In order to redesignate a nonattainment area, EPA policy requires that three years of ozone data show an expected exceedance calculation of less than or equal to 1.0. The most recent eight quarters of quality assured ambient air data may suffice provided that no exceedances have occurred. In addition, the data must be accompanied by a demonstration of implementation of an EPA-approved control strategy.

Georgia has submitted ambient air quality data collected at three monitoring sites in Columbus. Two of the sites were continued because of their close proximity. In 1980, 1981, and 1982, the ozone monitor was located at Columbus College. Because of eviction from the Columbus College campus, the monitor was moved to the Columbus Airport by the end of 1982. This was a move of approximately one to one and one-half miles. The move was reviewed by EPA and determined to be representative of the Columbus College

site and in conformance with the 40 CFR Part 58 siting criteria. Therefore, the Columbus College and Columbus airport sites are considered to be the same site and their data has been combined in order to have the required three years of monitoring data.

The three years of ambient ozone data is the basis for the redesignation request. Specifically, the most recent three years of air quality data (1982, 1983, and 1984) show the number of expected exceedances to be less than or equal to 1.0, as is summarized below:

	Exceedances (ppm)	Number of expected exceedances <sup>1</sup>	NAAQS ozone <sup>2</sup>
<b>College/Airport:</b>			
1982	none	0.8	.12 ppm
1983	.140		
1984	.152		
<b>Total</b>	<b>2 exceedances</b>		
<b>Crime Lab:</b>			
1982	none	0.4	
1983	.125		
1984	none		
<b>Total</b>	<b>1 exceedance</b>		

<sup>1</sup> Three-year average.

<sup>2</sup> Not to be exceeded more than once per year.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control strategy, EPA proposes to approve the redesignation of the two counties in the Columbus-Phenix City Interstate AQCR from ozone nonattainment to attainment.

#### Proposed Action

EPA is today proposing to approve the redesignation of the Russell County and Muscogee County ozone nonattainment areas on the basis of three years of air quality data and an EPA-approved control strategy.

The public is invited to participate in this rulemaking by submitting written comments on these proposed actions.

Under 5 U.S.C. Section 605(b), I certify that area redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7642.

Dated: July 23, 1985.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 85-26454 Filed 11-5-85; 8:45 am]

BILLING CODE 5560-50-M

#### 40 CFR Parts 704 and 799

[OPTS-42076; TSH-FRL 2906-8]

#### Anthraquinone; Proposed Reporting and Recordkeeping Requirements and Test Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing that manufacturers (including importers) and processors of 9,10-anthraquinone (CAS No. 84-85-1), hereinafter "anthraquinone", be required, under section 4 of the Toxic Substances Control Act (TSCA), to perform testing for water solubility, bioconcentration, and acute toxicity to aquatic organisms. The Agency is also proposing, under section 8 of TSCA, that manufacturers and importers of anthraquinone be required to submit an annual report to EPA stating the volume of this substance manufactured or imported during their latest corporate fiscal year. Testing for biodegradation and chronic toxicity of aquatic organisms will be required if the acute toxicity or



bioconcentration test results and the annual production and importation level meet specified criteria. This proposed rule is in response to the Interagency Testing Committee's (ITC's) designation of anthraquinone for priority consideration for chemical fate and environmental effects testing.

**DATES:** Submit written comments on or before January 6, 1986. If persons request an opportunity to submit oral comment by December 23, 1985, EPA will hold a public meeting on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit IX of this preamble.

**ADDRESS:** Submit written comments, identified by the document control number (OPTS-42076), in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, RM. E-108, 401 M St., SW., Washington, D.C. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator -202-554-1404).

**SUPPLEMENTARY INFORMATION:** EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the ITC's designation of anthraquinone for chemical fate and environmental effects testing consideration and reporting requirements under section 8(a) to require manufacturers and importers to report to EPA the volume of anthraquinone manufactured or imported during their latest corporate fiscal year.

## I. Introduction

### A. ITC Recommendation

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC under section 4(e) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated anthraquinone (CAS No. 84-65-1) for priority consideration in its 15th Report submitted to EPA on November 6, 1984, and published in the *Federal Register* of November 29, 1984 (49 FR 46931). The ITC recommended that anthraquinone

be considered for chemical fate testing, including water solubility and biodegradation, and ecological effects testing, including acute toxicity to fish, aquatic invertebrates, and algae, and chronic toxicity to aquatic organisms, conditional upon results of acute tests. The bases for these recommendations were as follows: the chemical fate and toxicity tests that were reviewed had been performed at test concentrations that exceeded and reported water solubility level of anthraquinone; the resulting data could not be interpreted reliably or were inadequate to quantify the acute and potential chronic toxicity to aquatic organisms; and the data indicated that anthraquinone may be toxic to aquatic organisms since organisms were killed in the toxicity tests.

### B. Test Rule Development Under TSCA

Under Section 4(a) of TSCA, EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (ii) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding: both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine

whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1)(A)(iii) or 4(a)(1)(B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules as published in the *Federal Register* of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 45 FR 48524 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

In evaluating the ITC's testing recommendations for anthraquinone, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of anthraquinone under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) for anthraquinone; and published and unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule, EPA is proposing chemical fate and environmental effects testing requirements for anthraquinone under section 4(a)(1)(B). By these actions, EPA is responding to the ITC's designation of anthraquinone for priority testing consideration.

### C. TSCA Section 8(a) Recordkeeping And Reporting

Section 8(a) of TSCA (15 U.S.C. 2607(a)) authorizes EPA to require persons (other than small manufacturers, importers, and processors as defined in § 704.3) who manufacture, import or process a chemical substance, to submit such reports as the Administrator may reasonably require. In order to monitor production and importation volume of



anthraquinone, EPA is proposing in this same Federal Register document as the section 4 testing requirements that manufacturers and importers be required to submit an annual report to EPA stating the volume of this substance manufactured or imported during their latest corporate fiscal year.

## II. Review of Available Data

### A. Profile

Anthraquinone is a pale yellow crystalline solid. Its melting point is 286 °C, and its boiling point is 377 °C (Ref. 1). Anthraquinone has a low calculated vapor pressure of  $6.7 \times 10^{-6}$  mm Hg at ambient temperatures (Ref. 2). Anthraquinone is soluble in organic solvents, and the log octanol/water partition coefficient has been reported to be 3.39 (Ref. 1). Various values have been reported for its solubility in water: 0.05 mg/l (Ref. 3) and 0.5 mg/l (Ref. 4), but these values are not supported by data. From the experimentally determined log  $K_{ow}$  of 3.39, EPA has estimated anthraquinone's water solubility to be 0.29 mg/l (Ref. 2).

### B. Production

There is currently no manufacture of anthraquinone in the United States. The Toms River Chemical Corp., a subsidiary of Ciba-Geigy Corp., in Toms River, NJ, produced anthraquinone in the United States until about 5 years ago (Ref. 5).

EPA has identified three importers of anthraquinone with total estimated annual imports of about 700,000 lb. based on 1983 and 1984 reports. The U.S. International Trade Commission reported total imports of 813,322 lb. for 1983 (Ref. 24).

Anthraquinone has been found in the combustion products of fossil fuels; Robertson et al. found anthraquinone in the exhaust of a turbine aircraft engine at levels of up to 58.49 ng/m<sup>3</sup> (Ref. 9). In 1982, Ehrhardt et al. suggested that anthraquinone may be formed in the atmosphere by photooxidation of anthracene (Ref. 10). Another inadvertent source of production was reported by Oyler et al., who found that anthracene under conditions simulating a water chlorination treatment process gave a 61 to 78 percent conversion to anthraquinone (Ref. 11).

### C. Use

There are two major industrial uses of anthraquinone in the United States. The principal use is in the production of anthraquinone dyes, so named because of the presence of an anthraquinone nucleus (usually extensively substituted) in the molecular structure. Although

some anthraquinone dyes employ anthraquinone as a starting material, there are many others in which anthraquinone is only formed as a nonisolated intermediate (Ref. 1). The primary use of anthraquinone as a starting material in dyestuff manufacture is in the production of sulfonic acid derivatives of anthraquinone. This reaction is achieved by treating anthraquinone with fuming sulfuric acid in the presence of a mercury catalyst (Ref. 1). The chemical principles that underlie the production of dyestuffs from anthraquinone via sulfonic acid derivatives (Ref. 12) imply that several major dye products may be produced from anthraquinone starting material; but the proprietary nature of dyestuff industry practices makes it difficult to identify specific dye products (Ref. 1).

The second major industrial use of anthraquinone that appears to be growing in importance is its catalytic use in the paper-pulping industry. Anthraquinone catalyzes the removal of lignin from wood, thereby increasing pulp yield and quality. This use has application to both the soda and Kraft chemical pulping processes at typical levels of 0.025 to 0.1 percent of the bone-dry wood weight. The use of anthraquinone is also reported to reduce reaction (delignification) time and the need for sodium sulfite in paper pulping, resulting in savings in energy and raw materials and in reducing undesirable sulfur byproducts (Ref. 13). The use of anthraquinone has been approved by the Food and Drug Administration at levels up to 0.1 percent in paper products contacting food products (Ref. 14).

Because of the apparent economic benefits of using anthraquinone in the pulping industry, it is expected that anthraquinone's use will increase (Ref. 15). EPA estimates that the future market for anthraquinone in pulping could possibly exceed 7 million pounds per year (Ref. 16).

In Europe, anthraquinone receives wide usage as a bird repellent in protecting planted seeds (Ref. 17). At present, anthraquinone is not registered for use as a bird repellent in the United States (Ref. 18).

### D. Exposure and Release

Anthraquinone has been reported to be present in the waste effluents of dye-manufacturing and paper-pulping plants (Refs. 25 and 26). Games and Hites (Ref. 25) investigated the effluent discharges of South Carolina dye-manufacturing plant in July 1976 using sensitive high-resolution gas chromatography/mass spectrometry (GC/MS) techniques. The

plant utilized 3 million gallons of noncontaminated water daily in its processes, which were discharged along with organic materials into the plant waste treatment system. A total of 920 tons of organic materials were discharged annually for treatment. The waste treatment plant used neutralization, aerobic, and settling processes with a total residence time of 19 days. The treated waste was discharged directly into a tidal river, which resulted in an approximate 1,000-fold dilution of the treated waste. The investigators sampled both the untreated and treated waste effluent, as well as the water and bottom sediments of the waste-receiving river. Because the plant manufactured a variety of dyes on a batch basis, a total of 9 weekly composite samples of wastewater were collected over a 2.5-month period. Anthraquinone was detected in 6 of the composite samples at levels of 49 to 110 ppb. Anthraquinone was not detected in the treated effluent or in the water or sediment of the waste-receiving river (Ref. 25). However, a more typical residence time in the waste treatment facility for the industry is 6 days and not 19 days as in this study (Ref. 25), and this difference in residence time may have caused the reported absence of anthraquinone in the treated wastewater.

In a laboratory simulation, Zanella et al. determined the concentration of anthraquinone in the waste effluents from Kraft pulping using 0.1 percent anthraquinone and also determined the concentration in the treated effluent after it was subjected to the waste treatment conditions typical of those used in full-scale plants (Ref. 26). The waste effluent from pulping was prepared by mixing 5.0 liters of black (digesting) liquor, 7.0 liters of chlorine-stage effluent, and 4.0 liters of caustic-extraction-stage effluent and diluting to 76 liters with tap water. The concentration of anthraquinone in this simulated waste effluent was 2.7 ppm. The simulated final (treated) mill effluents were produced by treating the simulated waste effluents in complete-mix activated sludge units. The units were fed at a rate which produced a hydraulic detention time of 8 hours. The mean cell residence time of 7.3 days was controlled by daily removal of sludge from the unit. The concentration of anthraquinone in the treated effluent was found to be 2.2 ppm. The simulated waste treatment process typical of the pulping industry had reduced the concentration of anthraquinone from 2.7 ppm to 2.2 ppm (a 19-percent reduction).



The Agency received effluent monitoring data and treatability data from one paper pulping plant which was submitted under section 8(a) of TSCA. These data indicated that anthraquinone is present in effluents released to receiving streams in the upper ppb to lower ppm range. Specific levels were claimed as Confidential Business Information. Using these data and assuming a stream low flow rate that corresponds to the median for U.S. pulp and paper mills, EPA estimates that the receiving stream would have an anthraquinone concentration in water of 5 ppb. Because the time required for the build-up of anthraquinone in sediment is much longer, a median receiving stream with a mean flow rate was assumed and EPA's estimate of the concentration in the sediment is 0.1 ppm (Ref. 27).

Urban air samples collected in St. Louis, Missouri, have been found to contain a number of polycyclic quinones derived from polynuclear aromatic hydrocarbons, including 9,10-anthraquinone at unquantified levels (Ref. 20). Pankow et al. (Ref. 21) examined rainfall for content of trace organic compounds and reported that the average content of anthraquinone in rainfall from four storms in the spring of 1982 in a rural area 12 miles west of Portland, Oregon, was 6 ng/l. Rainfall collected in the Fall of 1982 from five storms over the city of Portland contained an average of 48 ng/l anthraquinone. The author suggested that the source of the anthraquinone was either primary combustion processes or subsequent oxidation of polycyclic aromatic hydrocarbons (PAH) in the atmosphere. Stahl et al. (Ref. 22) subjected a pile of Texas lignite coal to an artificial rainfall and found that the rainwater acquired a concentration of 0.7 ug/l anthraquinone after leaching through the coal pile.

Finished drinking water samples from 12 municipalities in the Great Lakes region were found to contain anthraquinone in concentrations ranging from 0 to 72 ng/l, with the average of 24 readings being 9.9 ng/l (Ref. 23).

In summary, the available monitoring data suggest that the occurrence of anthraquinone in the environment due to inadvertent production is widespread, but generally at very low concentrations. Most environmental populations will be exposed to these low background levels of anthraquinone with the only significant exposures above background expected to occur from point source industrial discharges. The two major uses of anthraquinone, in dye manufacture and paper pulping, are anticipated to release anthraquinone in

treated waste water to receiving streams. EPA expects that steady-state environmental concentrations of anthraquinone will be established by continuous effluent discharges. According to chemical fate predictions, anthraquinone released to water will remain in water, with some adsorption to bottom sediment. Under these conditions, the principal exposed environmental populations would include bottom-dwelling (benthic) fishes and invertebrates and organisms living in the water column. Chronic exposure situations in water column organisms may be created if anthraquinone is continuously discharged and/or persists in bottom sediments which serve as a reservoir for replacing anthraquinone dissipated in the water column by transport and various degradative mechanisms.

#### E. Chemical Fate

Although anthraquinone can be present in the air and drinking water at very low levels due to inadvertent production, the most significant release of anthraquinone to the environment is in treated industrial waste water. Its low vapor pressure ( $6.7 \times 10^{-18}$  mm Hg, Ref. 2), moderate octanol/water partition coefficient ( $\log K_{ow} = 3.39$ , Ref. 1), a log soil adsorption coefficient ( $\log K_{oc}$ ) of 3.18, and low Henry's Law constant ( $2.29 \times 10^{-11}$  atm-m<sup>3</sup> per mole, Ref. 1) indicate that anthraquinone should remain in water because of a negligible potential to volatilize from water and a limited tendency to adsorb to sediment. EPA estimates that 100 percent of anthraquinone released to water will remain in water and 50 percent will persist for more than 8 to 10 months (Ref. 2).

In studies conducted by C-I-L, Inc. and Mobay Chemical Corp., anthraquinone as found to have a half-life in an activated sludge biodegradation system of 5 to greater than 20 days (Refs. 4 and 28). C-I-L investigated the biodegradation of anthraquinone by determining the biochemical oxygen demand (BOD) over a 27-day period using an anthraquinone concentration of 500 mg/l in the test solutions. One series of solutions was inoculated with a microbial culture acclimated to anthraquinone; the other was inoculated with a culture not acclimated to anthraquinone. The results indicated that the anthraquinone had completely degraded after 18 days in the acclimated culture and after 24 days in the nonacclimated culture. In addition, 61 and 45 percent of the anthraquinone had degraded in 5 days in the acclimated and nonacclimated cultures, respectively (Ref. 4). Mobay

determined the BOD in 20 days in acclimated and unacclimated cultures containing 2.4 ppm anthraquinone. The BOD<sub>20</sub> in the acclimated culture was 833 mg oxygen per gram of anthraquinone, which corresponded to 40 percent biodegradation. The BOD<sub>20</sub> in the unacclimated culture was 313 mg oxygen per gram of anthraquinone or 15 percent biodegradation (Ref. 28).

C-I-L also submitted a study showing that anthraquinone at concentrations greater than 10 ppm has a negative impact on the anaerobic digestion process. This study found that anthraquinone decreased methane production and increased volatile acid production during the anaerobic digestion of household waste as it would occur in cesspools or septic tanks. The anaerobic digestion systems contained a mixture of primary solids, digested sludge, tissue paper, and varying concentrations of anthraquinone (0.01, 0.05, 0.5, 1.0, 10, and 50 ppm). Three concentrations of anthraquinone (1.0, 10, and 50 ppm) exceeded the reported water solubility. The mixtures and appropriate controls were incubated in laboratory digesters at 38° C for 60 days. Cumulative gas production (primarily CO<sub>2</sub> and methane) in all anthraquinone-spiked test units was greater than that produced in the controls by day 60. Production of gases in units with anthraquinone concentrations from 0.01 to 1.0 ppm progressed at a relatively rapid rate throughout the test period, while units with 10 and 50 ppm exhibited slower initial rates of production, which was found to be due to an inhibition of methane production during the first 14 days of incubation. A similar trend was observed in the destruction of volatile acids. Controls and anthraquinone concentrations from 0.01 to 1.0 ppm experienced radical reduction in concentration of volatile acids (1,253 to 620 ppm) after 7 days of digestion with no indication of lag time, whereas units with 10 and 50 ppm anthraquinone showed a significant increase in volatile acid production (1,100 to 3,197 ppm) over the same time period. This indicates that anthraquinone at concentrations above 10 ppm may have a significant negative impact on anaerobic digestion. However, the volatile acid levels and methane levels in all units approximated that of the controls after day 31 and day 39, respectively. In addition, lag times of 3 and 6 days in reaching pH 7 were observed in units with anthraquinone concentrations of 10 and 50 ppm, respectively (Ref. 4).

In summary, the broad range of reported biodegradation half-lives and



the indication of adverse effects on anaerobic digestion raise concern over the persistence and degradability of anthraquinone. Also, the lack of biodegradation data under environmentally relevant conditions, i.e., at potential environmental concentrations and in natural waters with their unique physical, chemical and microbial characteristics, make the available data inadequate to evaluate the chemical fate of anthraquinone.

#### F. Environmental Effects

The acute toxicity of anthraquinone to fathead minnows was determined using a 96-hour static bioassay. Test conditions included a temperature of 20 to 20.5 °C, pH of 7.3 to 7.6, dissolved oxygen of 6.7 to 8.1 mg/l, and fish loading of 0.34 g fish/l. Nominal test concentrations of 1.8 to 7.5 g/l were greatly in excess of the reported solubility limit of 0.5 mg/l. Under these conditions, a 96-hour median lethal concentration (LC<sub>50</sub>) of 2.65 g/l was determined (average of duplicate measurements) with 95-percent confidence limits of 2.27 to 3.09 g/l. The 24- and 48-hour LC<sub>50</sub> values were reported to be 3.35 g/l and 3.0 g/l, respectively. The authors reported that the fish gills were coated with undissolved anthraquinone and speculated that resultant suffocation produced the observed mortality. At the lowest nominal concentration tested (1.8 g/l), 7 percent mortality was obtained at 96 hours (compared to 0 percent in controls). Therefore, the test conditions chosen failed to demonstrate a level at which no acute effects were observed at 96 hours (Ref. 4). Chillingworth reported no effects to fathead minnows exposed to 180 ppm anthraquinone (Ref. 29). Applegate et al. exposed pairs of rainbow trout, bluegill sunfish, and larval sea lampreys to 5 ppm of anthraquinone at 55 °F for 24 hours and observed no mortalities (Ref. 30). C-I-L, Inc., reported that exposure of fathead minnows to 0.4 ppm anthraquinone produced virtually no lethality over 28 days (Ref. 4). Using different species, MacPhee and Ruelle obtained complete mortality in 13 hours or less in single specimens of chinook salmon, coho salmon, and northern squawfish exposed to 10 ppm anthraquinone at 52 °F (Ref. 31).

Anthraquinone does not bioconcentrate significantly. The measured bioconcentration factor is 24 in fathead minnow (Ref. 4), 56 in bluegill (Refs. 3 and 26), and 127 in *Daphnia pulex* (Refs. 3 and 28). The calculated bioconcentration factor is 222 based on the measured log K<sub>ow</sub> of 3.39 (Ref. 32).

The acute toxicity of anthraquinone to the aquatic invertebrate, *Daphnia pulex*, was investigated by C-I-L, Inc. With nominal concentrations ranging from 1 ppm to 314 ppm and triplicate determinations, the 48-hour median effective concentration (EC<sub>50</sub>, endpoint was immobilization) of anthraquinone was determined to be 110 ppm, with 95 percent confidence limits of 70 to 170 ppm. EC<sub>50</sub> values for 24 and 96 hours were reported as 178 ppm and 46.3 ppm, respectively (Ref. 4).

Chillingworth reported no effects in the algae *Selenastrum capricornutum* exposed to 1 and 10 ppm anthraquinone (Ref. 29).

When radish seeds, *Raphanus* sp., were soaked with anthraquinone solutions ranging from 100 to 500 parts per thousand (ppt), the median effective dose (ED<sub>50</sub>) inhibiting germination was 455 ppt with growth and production of the hypocotyl and radicle diminished at 400 and 500 ppt (Ref. 4). The growth and development of wheat and soybean seedlings were not affected by exposure to 500 ppm anthraquinone, using criteria of shoot height and biomass, root biomass, and pathology (Ref. 4). Metcalf noted minimal fungicidal activity of anthraquinone when compared to a variety of quinones active against *Alternaria solani* (Ref. 33).

Schafer et al. screened a number of chemicals for acute toxicity and repellence in avian species. Oral LC<sub>50</sub> values of 100 ppm and 300 ppm were reported for anthraquinone in the red-winged blackbird (*Agelaius phoeniceus*) and the house sparrow (*Passer domesticus*). A 46.1-ppm feed concentration repelled 50 percent of an exposed red-winged blackbird population (Ref. 6).

The available aquatic toxicity data are not adequate to evaluate the effects of anthraquinone on fish and aquatic invertebrates.

#### III. Findings

EPA is basing its proposed testing of anthraquinone on the authority of section 4(a)(1)(B) of TSCA. Existing data indicate that anthraquinone may be imported in substantial quantities and that substantial environmental release may be reasonably anticipated to occur. Annual imports of anthraquinone are 813,000 lb. and could possibly exceed 7 million pounds per year. Discharge data from one wood pulping plant using anthraquinone as a catalyst show that the plant is currently releasing effluents with anthraquinone concentrations in upper ppb to lower ppm range. There are approximately 100 pulping plants in the U.S. that could potentially use anthraquinone in their processing (Ref.

34). If this use of anthraquinone increases, such releases could become widespread. For these reasons, annual reporting under § 8(a) is necessary to allow EPA to monitor increases in the production and importation of anthraquinone.

EPA also finds that the data now available are insufficient to reasonably determine or predict the chemical fate and environmental effects of releases from the use and processing of anthraquinone.

There is no measured value for anthraquinone's solubility in water, and the reported values of 0.05 mg/l (Ref. 3) and 0.5 mg/l (Ref. 4) are not supported by data. A third value for water solubility is EPA's estimate of 0.3 mg/l (Ref. 2).

The Agency finds that the biodegradation studies submitted by C-I-L, Inc. (Ref. 4) and Mobay Chemical Corp. (Ref. 28) were conducted at concentrations exceeding the water solubility of anthraquinone and presented a half-life range (5 to greater than 20 days in activated sludge) too broad to reasonably predict anthraquinone's persistence in the environment. This broad range is particularly unsatisfactory since the typical waste treatment residence times for the dye and pulp industries are 6 and 8 days, respectively (Refs. 25 and 26). The Agency also finds that the submitted studies are not necessarily relevant to assessing biodegradation by microbial populations in natural waters, which possess a different array of microbial communities, and physical and chemical characteristics compared to waste-treatment systems.

Considering release and chemical fate information presented in Units II.D and E above, EPA expects that potential exposure to anthraquinone will be greatest for fish, aquatic invertebrates, and benthic organisms. EPA finds that there are no toxicity or bioconcentration data on benthic organisms and no chronic effects data on fish and aquatic invertebrates.

After reviewing and evaluating the existing acute toxicity data for aquatic organisms experimentally exposed to anthraquinone, EPA has determined that sufficient data exist for fathead minnow, but additional data are necessary to determine whether salmonids are substantially more sensitive as suggested by the MacPhee and Ruelle study (Ref. 31). EPA also finds that additional acute toxicity studies of fish and aquatic invertebrates are necessary since the existing studies were done at concentrations exceeding the water solubility of anthraquinone.



EPA finds that sufficient data are available from the study done by Chillingworth (Ref. 29) to reasonably predict anthraquinone's toxicity to algae.

Finally, EPA finds that testing is necessary to develop the chemical fate and environmental effects data described above.

#### IV. Proposed Rule

##### A. Proposed Testing and Test Standards

The Agency is proposing that chemical fate and environmental effects testing be conducted on anthraquinone in accordance with specific test guidelines set forth in Title 40 of the Code of Federal Regulations as enumerated below. Test methods under new Parts 796, 797, and 798 were published in the Federal Register of September 27, 1985 (50 FR 39252).

In view of the prospect for a growing market for anthraquinone due to use in pulping and the projected economic impact of the full set of aquatic tests EPA believes would be necessary to adequately assess the environmental risks of anthraquinone, the Agency is proposing that testing be conducted in two tiers. By tiering testing, EPA expects to obtain limited data now from the first tier to better assess the potential for expanded releases of anthraquinone to pose significant risks. Should the use of anthraquinone as a pulping catalyst expand substantially, the second tier of testing will provide the more complete data needed to evaluate the possible risks associated with substantially larger aquatic releases of the chemical.

EPA is proposing that the first tier testing of anthraquinone be conducted now to determine (1) the water solubility to properly design the subsequent proposed tests, using the TSCA guideline entitled "Water Solubility, Generator Column Method" as specified in § 796.1860; (2) the acute toxicity to chinook salmon, *Oncorhynchus tshawytscha*, or coho salmon, *Oncorhynchus kisutch*; bluegill, *Lepomis macrochirus*; and rainbow trout, *Salmo gairdneri*, using the TSCA guideline entitled "Fish acute toxicity test" as specified in § 797.1400 and as modified in § 799.500(c)(2)(i)(B); (3) the acute toxicity to the invertebrates *Daphnia magna* or *D. pulex*, and oyster, *Crassostrea virginica*, using the TSCA guidelines entitled "Daphnid acute toxicity test" as specified in § 797.1300 and as modified in § 799.500(c)(3)(i)(B) and "Oyster acute toxicity test" as specified in § 797.1800 and as modified in § 799.500(c)(3)(i)(C); (4) the marine sediment toxicity to the amphipod, *Rhepoxynius abronius*, according to the

method of R.C. Swartz, et al., "Phoxocephalid Amphipod Bioassay for Marine Sediment Toxicity", published in the American Society for Testing and Materials Special Technical Publication 854 (ASTM STP 854), R.D. Caldwell et al. (eds.) (Ref. 7); and (5) bioconcentration in oyster, *Crassostrea virginica*, using the TSCA guideline entitled "Oyster bioconcentration test" as specified in § 797.1830 and as modified in § 799.500(c)(5)(i)(B). EPA would prefer to require bioconcentration testing in a freshwater benthic invertebrate but the Agency is unaware of a test guideline which has been sufficiently tested to insure the reliability of results. If such a test guideline is found EPA will consider substituting it for the bioconcentration test in oyster.

In order to evaluate the potential hazard of the median lethal concentrations (LC<sub>50</sub>'s) generated by the Tier II tests, EPA is proposing that the LC<sub>50</sub>'s be compared to the predicted environmental concentrations (PEC's) for anthraquinone in water and sediment, i.e., 5 ppb and 0.1 ppm respectively, which have been determined from reported discharge levels (see Unit II.D above) (Ref. 27).

EPA is also proposing that a second tier of tests shall be conducted if two triggers are met—a hazard trigger and a production/import level trigger. The hazard trigger will be met if the median lethal concentrations (LC<sub>50</sub>'s) generated by the Tier I tests are less than 100 times the predicted environmental concentrations. The production/import level trigger will be met when annual production/import levels reach 3 million lb. EPA will use the section 8(a) reporting to monitor the production/import levels.

If both triggers are met, EPA is proposing that the Tier II tests be required based on the results of the Tier I tests as follows. If the most sensitive fish, i.e., the fish with the lowest LC<sub>50</sub> as determined by the above-proposed acute toxicity tests, has an LC<sub>50</sub> less than 100 times the predicted environmental concentration (PEC) for water, i.e., less than 500 ppb, testing of anthraquinone shall be conducted to determine the chronic toxicity to the most sensitive fish, using the TSCA guideline entitled "Fish early life stage toxicity test" as specified in § 797.1600 and as modified in § 799.500(d)(3)(i)(B). If the daphnid has an EC<sub>50</sub> as determined by the above-proposed acute toxicity test which is less than 100 times the PEC for water, i.e., less than 500 ppb, testing of anthraquinone shall be conducted to determine the chronic toxicity to daphnid, using the TSCA guideline entitled "Daphnid chronic

toxicity test" as specified in § 797.1330 and as modified in § 799.500(d)(4)(i)(B).

Testing of anthraquinone to determine the chronic toxicity to *Rhepoxynius* or oyster or some other marine or freshwater benthic invertebrate is not proposed, as there is no known acceptable guideline that can serve as a test standard. However, the combined test results from the oyster acute toxicity test and the oyster bioconcentration test will provide an indication of potential toxicity of anthraquinone to filter feeding organisms.

If the LC<sub>50</sub> for fish, daphnid, or oyster is less than 100 times the PEC in water, i.e., less than 500 ppb, or if the LC<sub>50</sub> for *Rhepoxynius* in the marine sediment toxicity test is less than 100 times the PEC in sediment, i.e., less than 10 ppm, or if the oyster bioconcentration factor is greater than 3,000, then EPA is proposing that testing of anthraquinone shall be conducted to determine (1) the biodegradability in sludge systems, using the test method entitled "Inherent Biodegradability: modified SCAS (Semicontinuous activated sludge) Test for chemical substances that are water insoluble or water insoluble and volatile" as specified in § 796.3341 and (2) biodegradation rate using the protocol described in a study by Bourquin et al. (Ref. 8).

EPA chose to trigger second tier testing with an increase in production/import level for two reasons. First, as the use of anthraquinone increases, the Agency's concerns for environmental release and the potential for unreasonable risk to the environment increase. Under such conditions, the need for further testing to fully characterize the hazard potential and chemical fate of anthraquinone becomes essential. If the data developed in the first tier of testing don't meet at least one of the hazard triggers described above, there would be no potential to trigger further testing and thus no need for continued section 8(a) reporting; EPA then would remove the section 8(a) reporting requirement and publish a notice of such action in the Federal Register.

However, if these data suggest concern and if use continues to increase to 3 million lb per year, the second tier of testing is considered essential. EPA also chose a production/import level of 3 million lb. per year because it represents substantial market growth of the chemical over current levels and a level at which EPA's analysis indicates the second-tier tests will not cause an adverse economic impact. The section 8(a) reports will be the means to



determine when the 3-million-lb-trigger is met.

The Agency is proposing that the above-referenced TSCA Chemical Fate and Environmental Effects Test Guidelines and other cited methods be considered the test standards for the purposes of the proposed tests for anthraquinone. The TSCA guidelines for chemical fate and aquatic toxicity testing specify generally accepted minimal conditions for determining chemical fate and aquatic animal toxicities for substances like anthraquinone to which aquatic life is expected to be exposed. The Agency's review of the guidelines, which occurs on a yearly basis as described in the Federal Register September 22, 1982 (47 FR 41857), has found no reason to conclude that these protocols need to be modified significantly. However, several chemical specific modifications were deemed necessary to ensure that the test concentrations adequately define the dose-response curve and are adequately maintained throughout the duration of the test. These modifications are listed in § 799.500 of this rule.

EPA intends to propose shortly in a separate Federal Register notice certain revisions to these TSCA Test Guidelines to provide more explicit guidance on the necessary minimum elements for each study. In addition, these revisions will avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules. EPA is proposing that these modifications be adopted in the test standards for anthraquinone. Additionally, the ASTM guideline (Ref. 7) and the test procedures employed by Bourquin et al. (Ref. 8) specify, in EPA's judgment, minimal test conditions and practices for acceptable investigations of anthraquinone's toxicity in sediment to marine amphipods and rate of biodegradation. Although the Agency has not issued TSCA testing guidelines for benthic invertebrates or biodegradation rate, the testing procedures found in these references reflect the current state-of-the-art for such testing and are being proposed as acceptable methods for testing anthraquinone toxicity to benthic invertebrates and biodegradation rate.

#### B. Test Substance

EPA is proposing that 9,10-anthraquinone of at least 99-percent purity be used as the test substance. Anthraquinone of this purity is commercially available at nominal cost (Ref. 19). EPA has specified a highly pure substance for testing because the Agency is interested in evaluating the

effects attributable to anthraquinone itself.

#### C. Persons Subject to the Rule

1. *Persons Required to Test.* Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

Because EPA has found that the release from the processing and use of anthraquinone may reasonably be anticipated to give rise to substantial environmental release, EPA is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process, anthraquinone at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements contained in this proposed rule. The end of the reimbursement period will be 5 years after the last final report is submitted.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

When both manufacturers and processors are subject to a test rule, EPA expects that manufacturers will conduct the testing and that processors will ordinarily be exempted from testing. As described in 40 CFR Part 790, processors will be granted an exemption automatically without filing applications if manufacturers perform all of the required testing. Manufacturers are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the test rule.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the

proposed testing for anthraquinone. As noted in Unit IV.B above, EPA is interested in evaluating the effects attributable to anthraquinone itself and has specified a highly pure substance for testing.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

EPA is exempting from these testing requirements those manufacturers and processors that produce and process anthraquinone only as an impurity. Persons who manufacture or process anthraquinone as a byproduct or as a nonisolated intermediate are subject to the testing requirements set forth in this rule. The total anthraquinone imports and domestic production, including that produced as a byproduct or a nonisolated intermediate, will be used in determining reimbursement shares under the Data Reimbursement Final Rule (48 FR 41786; September 19, 1983). The Agency's rationale for these decisions follows.

EPA is exempting those manufacturers and processors that produce anthraquinone only as an impurity because the EPA findings under section 4(a) are based on exposures to anthraquinone that are a result of intentional manufacture, processing, and distribution of anthraquinone. In addition, it would be difficult for both EPA and manufacturers and processors to identify with complete assurance all chemical substances which contain anthraquinone solely as an impurity. Further, the Agency would find it difficult to apply both the exemption and reimbursement processes to those who manufacture and/or process anthraquinone solely as an impurity. The Agency's reimbursement regulations issued pursuant to section 4(c) state that those who manufacture or process chemical substances as impurities will not be subject to test requirements unless the rule specifically states otherwise (40 CFR 791.48(b)). EPA finds no basis to impose such a requirement in this rule. EPA is including persons who manufacture or process anthraquinone as a byproduct or nonisolated intermediate because these activities constitute intentional manufacture and processing of anthraquinone.

2. *Persons Required To Submit Production and Import Information.* Persons (other than small manufacturers and importers) who manufacture or import anthraquinone as of the effective date of the final rule, plus persons (other than small manufacturers and



importers) who manufacture or import the substance after that date, would be required to submit section 8(a) data under this rule. Although TSCA section 8(a)(3)(A)(ii) would allow EPA to require reporting by small manufacturers and small importers of anthraquinone (because anthraquinone is concurrently being made subject to a section 4 rule), EPA has determined that such reporting is not necessary to achieve the purposes of this rule.

#### D. Reporting Requirements

1. *Under Section 4.*—EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 30 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test standards as follows:

1. The water solubility, acute toxicity, sediment toxicity and bioconcentration tests shall be completed and the final results submitted to EPA within 1 year of the effective date of the final test rule. Quarterly progress reports shall be required.

2. The fish and daphnid chronic toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the date that EPA published a Federal Register notice reporting that production/imports have reached 3 million lb. per year if those criteria necessary to trigger chronic aquatic toxicity testing are met. If this testing is triggered, quarterly progress reports shall be required.

3. The biodegradability in sludge and biodegradation rate tests shall be completed and the final results submitted to EPA within 1 year of the date that EPA publishes a Federal Register notice reporting that production/imports have reached 3 million lb. per year if those criteria necessary to trigger biodegradation testing are met. If this testing is triggered, quarterly progress reports shall be required.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

Persons who export a chemical substance or mixture that is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707 (45 FR 82844; December 16, 1980). In brief, as of the effective date of the final test rule, an exporter of anthraquinone must report to EPA the first annual export or intended export of anthraquinone to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

2. *Under Section 8.*—Any person who manufactured or imported anthraquinone during the person's latest complete corporate fiscal year prior to the effective date of the final rule must submit an initial report to EPA 60 days after the effective date of the final rule. Any person who manufactures or imports anthraquinone after the effective date of the final rule must submit a report 60 days after the conclusion of their corporate fiscal year in which they initially manufactured or imported anthraquinone.

Any person who manufactures or imports anthraquinone following the year for which an initial report was submitted, must submit a subsequent report for each year in which he/she manufactured or imported the named substance 60 days after the conclusion of their corporate fiscal year in which they manufactured or imported anthraquinone.

The report must contain the following information:

- (1) Company name and address.
- (2) Name, address, and telephone number of the principal technical contact.
- (3) The quantity (by weight) of anthraquinone manufactured or imported during the latest corporate fiscal year.

#### E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule or a section 8 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11

applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce \* \* \*". The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for anthraquinone. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, and that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of the TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16.



Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

#### V. Issues for Comment

Through all aspects of this proposed rule are open to comment, EPA is soliciting comment particularly on the following issues:

(1) EPA is not aware of standard methods with which industry has adequate experience to test for bioconcentration and chronic toxicity in benthic invertebrates when the test substance is added to sediment. The Agency would welcome information concerning the availability of such methods.

(2) EPA would welcome comments on its two-tiered approach to testing, the hazard-based and production/import-based triggers, and the mechanism for determining whether the production/import trigger is met.

#### VI. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs for the proposed rule for anthraquinone are estimated to range from \$32,380 to \$100,200. This

estimate includes the costs for both the required minimum series of tests as well as the conditional ones. The total cost of Tier I tests is estimated to range from \$13,650 to \$43,900. The annualized cost of the mandatory minimum (Tier I) tests (using a cost of capital 25 percent over a period of 15 years) range from \$3,540 to \$11,380. Based on the 1983 importation level of 813,000 pounds, the unit test costs range from 0.4 to 1.4 cents per pound. In relation to the current list price of \$2.25 per pound (Ret. 19) for anthraquinone, these costs are equivalent to 0.17 to 0.62 percent of price.

The total cost of the conditional (Tier II) tests is estimated to range from \$18,730 to \$56,300 with the annualized cost (using a cost of capital of 25 percent over a period of 15 years) ranging from \$6,047 to \$18,225. When production/imports reach 3 million pounds per year, the unit test costs of the Tier II test independent of the Tier I tests range from 0.16 to 0.48 cents per pound. In relation to the current list price of \$2.25 per pound for anthraquinone, the combined Tier I and Tier II unit costs (0.6 to 1.9 cents per pound) are equivalent to 0.25 to 0.86 percent of price.

EPA estimates that the cost of preparing and submitting the section 8(a) report would be minimal. Shall manufacturers and importers are exempt from reporting and there is no official form to be completed. A company may submit the information in whatever manner it finds appropriate. A company's cost of reporting under the rule will be a function of the cost of labor for those doing the reporting and the number of hours it takes for them to comply. We estimate that the direct filing cost for the section 8(a) report ranges from \$150 to \$500.

The Level I economic analysis indicates that the potential for adverse economic effects due to the estimated test cost is low. This conclusion is based on the following observations: (1) The market expectations for anthraquinone are optimistic; (2) the estimated unit test costs are low; and (3) Tier II tests are dependent on market growth to 3 million pounds per year. A Level II analysis is not necessary.

#### VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional

demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the NTIS (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

#### VIII. Availability of Test Guidelines

The following guidelines, study plans, and other relevant sources of information cited in this rulemaking are available from the following source:

American Society for Testing and Materials (ASTM), 1916 Race St., Philadelphia, PA 19103, (215-229-5585).

#### IX. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, D.C. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-8065); Washington, D.C.: (554-1404); outside the U.S.A. (Operator—202-554-1404) by December 23, 1985. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

#### X. Public Record

EPA has established a record for this rulemaking, (docket number OPTS-42076). This record contains the basic information considered by the Agency in developing this proposal and appropriate Federal Register notices.

This record includes the following information:

##### A. Supporting Documentation

(1) Federal Register notices pertaining to this rule consisting of:



(a) Notice containing the ITC designation of anthraquinone to the Priority List (49 FR 46931: November 29, 1984).

(b) Rules requiring TSCA section 8(a) and (d) reporting on anthraquinone (49 FR 46739, 49 FR 46741: November 28, 1984).

(c) Notice containing TSCA test guidelines cited as test standards for this rule.

(d) Notice of final rulemaking on data reimbursement (48 FR 31786: July 11, 1983).

(e) Notice of final rule on single-phase test rule development and exemption procedures (50 FR 20652: May 17, 1985).

(f) TSCA GLP Standards (48 FR 53922: Nov. 29, 1983).

(2) Anthraquinone economic analysis.

(3) Communications before proposal consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials.

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- (30) Applegate, V.C., Howell, J.C., Hall, A.E., Jr., and Smith, M.A. "Toxicity of 4,346 chemicals to larval lampreys and fishes." U.S. Fish and Wildlife Service, Sp. Sci. Report—Fisheries No. 207, Washington, D.C. 1957.
- (31) MacPhee, C. and Ruelle, R. "Lethal effects of 1,888 chemicals upon four species of fish from western North America." Forest, Wildlife and Range Experiment Station, Moscow, ID. Univ. of Idaho. November 1969.
- (32) Veith, G.D., Macek, K.J., Petrocelli, S.R., and Carroll, J. "An evaluation of using partition coefficients and water solubility to estimate bioconcentration factors for organic chemicals in fish." *Aquatic Toxicology*, ASTM STP 707, J.G. Eaton, P.R. Parish, and A.C. Hendricks, Eds., American Society for Testing and Materials, 1980. pp. 116-129.
- (33) Metcalf, R.L. "The chemistry and biology of pesticides." In: *Pesticides in the Environment*. White-Stevens, R., Ed. New York: Marcel Dekker, Inc. 1971.
- (34) Denit, J.D., Dellinger, R.W., and W.D. Smith. "Development Document for Effluent Limitations Guidelines New Source Performance Standards and Pretreatment Standards for the Pulp, Paper and Paperboard and the Builders' Paper and Board Mills Point Source Categories." USEPA, October 1982.

EPA will supplement this record with relevant information as received. Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St., SW., Washington, D.C., from 8 a.m. to 4



p.m., Monday through Friday, except legal holidays.

## XI. Other Regulatory Requirements

### A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least \$100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 801 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this rule if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) they are not expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements and (4) small manufacturers and importers would be exempt from the reporting provisions of the rule.

### C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2070-0033 and 2070-0087. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

## List of Subjects in 40 CFR Parts 704 and 799

Testing, Environmental Protection, Hazardous Substances, Recordkeeping and Reporting Requirements, Chemicals.

Dated: October 31, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

### PART 704—[AMENDED]

1. Part 704 is amended as follows:

a. The authority citation for Part 704 continues to read as follows:

Authority: 15 U.S.C. 2607

b. By adding § 704.69 to read as follows:

#### § 704.69. Anthraquinone.

(a) *Substance for which reporting is required.* The chemical substance for which reporting is required under this rule is 9, 10-Anthraquinone (Chemical Abstract Service Registry Number 84-65-1).

(b) *Persons who must report.* The following persons unless exempt as provided in § 704.5 of this chapter are subject to the reporting requirements of this rule; a person may be required to report more than once in response to this rule.

(1) *Initial reporting.* Persons who manufactured or imported 9,10-Anthraquinone for commercial purposes during the person's latest complete corporate fiscal year prior to (the effective date of the final rule).

(2) *Subsequent reporting.* Persons who manufacture or import 9,10-Anthraquinone for commercial purposes after (the effective date of the final rule). The persons described in this paragraph (b)(2) include persons who reported initially in response to paragraph (b)(1) of this section and persons who commence the manufacture or importation of 9,10-Anthraquinone after (the effective date of the final rule).

(c) *When to report—(1) Initial reporting.* Persons described in paragraph (b)(1) of this section must submit an initial report within 60 days of (the effective date of the final rule).

(2) *Subsequent reporting.* Persons described in paragraph (b)(2) of this section must submit a report within 60 days of the completion of any corporate fiscal year during when they manufactured or imported 9,10-Anthraquinone. This requirement shall be applicable to persons who reported initially for the rule and persons who commence the manufacture or importation of 9,10-Anthraquinone after

(the effective date of the final rule). Persons shall submit a separate report for each corporate fiscal year in which they are subject to the rule.

(d) *What information to report.* All persons subject to this rule shall report the following information to EPAS.

(1) Company name and headquarters address.

(2) Name, address, and telephone number (including area code) of the company's principal technical contact.

(3) The quantity (in pounds) of 9,10-Anthraquinone manufactured or imported during the person's latest complete corporate fiscal year.

(e) *Where to send reports.* Reports must be submitted by certified mail to the United States Environmental Protection Agency, Document Processing Center, P.O. Box 2070, Rockville, MD 30852. Attn: Anthraquinone.

### PART 799—[AMENDED]

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By adding § 799.500, and the OMB control number to read as follows:

#### § 799.500 Anthraquinone.

(a) *Identification of test substance.*

(1) 9,10-Anthraquinone (CAS No. 84-65-1) (hereinafter "anthraquinone") shall be tested in accordance with this section.

(2) Anthraquinone of at least 99-percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture, import or process anthraquinone, other than as an impurity, from the effective date of the final rule (44 days after date of publication of the final rule in the Federal Register) to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, submit study plans, conduct tests (in accordance with Part 792 of this chapter), and submit data as specified in this section, Subpart A of this Part, and Part 790 of this chapter for single-phase rulemaking.

(c) *First tier chemical fate and environmental effects testing—(1) Water solubility—(i) Required testing.* Water solubility tests shall be conducted with anthraquinone in accordance with the test guideline specified under § 796.1860 of this chapter.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) The water solubility test shall be completed and the final results



submitted to the Agency within 1 year of the effective date of the final rule.

(C) Quarterly progress reports shall be submitted.

(2) *Fish acute toxicity*—(i) *Required testing*. (A) Fish acute toxicity tests shall be conducted with anthraquinone using chinook salmon, *Oncorhynchus tshawytscha*, or coho salmon, *Oncorhynchus kisutch*; bluegill, *Lepomis macrochirus*; and rainbow trout, *Salmo gairdneri* in accordance with the test guideline specified under § 797.1400 of this chapter and using modifications of the fish acute toxicity test for anthraquinone specified in paragraph (c)(2)(i)(B) of this section.

(B) Modifications. The following modifications for testing anthraquinone are required.

(1) At least five test concentrations shall be used. The highest concentration shall be less than or equal to the solubility limit of anthraquinone as determined under the testing specified in paragraph (c)(1)(i) of this section.

(2) At least one test concentration shall be between 1 ppb and 10 ppb.

(3) *Concentration of dissolved test chemical*. The requirement under § 797.1400 of this chapter is modified to require that the concentration of test substance shall be measured in each test chamber and the delivery chamber before the test to ascertain whether it is in solution. The total and dissolved (e.g., filtered) concentrations shall be determined.

(4) The test shall be performed under flow-through conditions; the minimum volume of the test solution delivered to each test aquarium in 24 hours shall be 5 times the aquarium volume.

(ii) *Reporting requirements*. (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) The fish acute toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(C) Quarterly progress reports shall be submitted.

(3) *Aquatic invertebrate acute toxicity*—(i) *Required testing*. (A) Aquatic invertebrate acute toxicity tests shall be conducted with anthraquinone using *Daphnia magna* or *D. pulex* and oyster, *Crassostrea virginica*, using the test guidelines specified under §§ 797.1300 and 797.1800 of this chapter, respectively, and using modifications of the daphnid and oyster acute toxicity tests for anthraquinone specified in paragraph (c)(3)(i)(B) and (C) of this section.

(B) Modifications of the daphnid acute toxicity test. The following modifications for testing anthraquinone are required.

(1) At least five test concentrations shall be used. The highest concentration shall be less than or equal to the solubility limit of anthraquinone as determined under the testing specified in paragraph (c)(1)(i) of this section.

(2) At least one concentration shall be between 1 ppb and 10 ppb.

(3) pH of the test solution. The pH of the test solution shall be 7.

(4) Concentration of dissolved test chemical. The requirement under § 797.1300 of this chapter is modified to require that the concentration of test substance shall be measured in each test chamber and the delivery chamber before the test to ascertain whether it is in solution. The total and dissolved (e.g., filtered) concentrations shall be determined.

(5) The delivery and test chambers shall be covered.

(6) The test shall be performed under flow-through conditions; the minimum volume of the test solution delivered to each test aquarium in 24 hours shall be 5 times the aquarium volume.

(7) The stability of the stock solution for the duration of the experiment must be analyzed and reported.

(C) Modifications of the oyster acute toxicity test. The following modifications for testing anthraquinone are required.

(1) At least five test concentrations shall be used. The highest concentration shall be less than or equal to the solubility limit of anthraquinone as determined under the testing specified in paragraph (c)(1)(i) of this section.

(2) At least one concentration shall be between 1 ppb and 10 ppb.

(3) Concentration of dissolved test chemical. The requirement under § 797.1800 of this chapter is modified to require that the concentration of test substance shall be measured in each test chamber and the delivery chamber before the test to ascertain whether it is in solution. The total and dissolved (e.g., filtered) concentrations shall be determined.

(4) The test shall be performed under flow-through conditions; the minimum volume of the test solution delivered to each test aquarium in 24 hours shall be 5 times the aquarium volume.

(ii) *Reporting requirements*. (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) The invertebrate acute toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(C) Quarterly progress reports shall be submitted.

(4) *Sediment toxicity*—(i) *Required testing*. A sediment toxicity test shall be

conducted using clean sediments having low, medium, and high clay content spiked with anthraquinone in the concentration range of 0.01 to 1 ppm using the marine amphipod,

*Rhepoxynius abronius*, according to the test guideline specified in the American Society for Testing and Materials Special Technical Publication 854 (ASTM STP 854) entitled,

"Phoxocephalid Amphipod Bioassay for Marine Sediment Toxicity," by R.C. Swartz, W.A. DeBen, J.K.P. Jones, J.O. Lamberson, and F.A. Cole and published in *Aquatic Toxicology and Hazard Assessment: Seventh Symposium*, ASTM STP 854, pp. 284-307, R.D. Caldwell, R. Purdy, and R.C. Bahner, Eds., 1985, which is incorporated by reference. The ASTM STP 854 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the *Federal Register*. Copies of the incorporated material may be obtained from the Document Control Officer (TS-793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(ii) *Reporting requirements*. (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) The sediment toxicity test shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(C) Quarterly progress reports shall be submitted.

(5) *Bioconcentration*—(i) *Required testing*. (A) A bioconcentration test shall be conducted with anthraquinone using oyster, *Crassostrea virginica*, in accordance with the test guideline specified under § 797.1830 of this chapter and using modifications of the oyster bioconcentration test for anthraquinone specified in paragraph (c)(5)(i)(B) of this section.

(B) Modifications. The following modifications for testing anthraquinone are required.

(1) The test concentration shall be less than the solubility limit of anthraquinone as determined under the testing specified in paragraph (c)(1)(i) of this section, and should be close to 1 ppb to 10 ppb.



(2) At least two concentrations shall be tested which are at least a factor of 10 apart.

(3) Concentration of dissolved test chemical. The requirement under § 797.1830 of this chapter is modified to require that the concentration of test substance shall be measured in each test chamber and the delivery chamber before the test to ascertain whether it is in solution. The total and dissolved (e.g., filtered) concentrations shall be determined.

(4) The test shall be performed under flow-through conditions; the minimum volume of the test solution delivered to each test aquarium in 24 hours shall be 5 times the aquarium volume.

(i) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) The bioconcentration test shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(C) Quarterly progress reports shall be submitted.

(d) *Second-tier chemical fate and environmental effects testing.* The following second-tier tests shall be conducted if EPA determines that the total annual volume of anthraquinone manufactured and imported in the United States during a single calendar year exceeds 3 million pounds, and the acute toxicity testing triggers described in this paragraph are met. EPA will monitor the production and importation volume of anthraquinone by requiring at 40 CFR 704.69 that manufacturers and importers of anthraquinone submit section 8(a) reports to the Agency. EPA will publish notification in the Federal Register if the manufacture/importation volume trigger and an acute toxicity trigger are met. If an acute toxicity trigger is not met and EPA determines that neither second tier testing nor further section 8(a) reporting is necessary, EPA will publish notification of this determination in the Federal Register and will terminate the section 8(a) reporting requirements for anthraquinone.

(1) *Biodegradability in sludge systems—(i) Required testing.* Biodegradability tests in sludge systems shall be conducted with anthraquinone at concentrations at or below the water solubility as determined under the testing specified in paragraph (c)(1)(i) of this section, and close to the predicted environmental concentration in sediment, i.e., 0.1 ppm, in accordance with the test method entitled "Inherent Biodegradability: Modified SCAS (semicontinuous activated sludge) Test for Chemical Substances that are Water Insoluble or Water Insoluble and

Volatile" as specified under § 796.3341 of this chapter, if EPA determines that the total annual volume of anthraquinone manufactured and imported in the United States during a single calendar year exceeds 3 million pounds, and any of the following conditions is met: (A) the  $LC_{50}$  of a fish or daphnid or oyster, as determined by the acute toxicity tests conducted in accordance with paragraph (c)(2) or (3) of this section, respectively, is less than 100 times the predicted environmental concentration (PEC) in water, i.e., less than 500 ppb; (B) the  $LC_{50}$  of *Rhepoxynius*, as determined by the sediment toxicity test conducted in accordance with paragraph (c)(4) of this section, is less than 100 times the PEC in sediment, i.e., less than 10 ppm; or (C) the oyster bioconcentration factor, as determined by the oyster bioconcentration test conducted in accordance with paragraph (c)(5) of this section, is greater than 3,000.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) The biodegradability tests in sludge systems shall be completed and the final results submitted to the Agency within 1 year of the date of a Federal Register notice announcing that the total annual volume of anthraquinone manufactured and imported in the United States during a single calendar year exceeds 3 million pounds.

(C) Quarterly progress reports shall be submitted.

(2) *Biodegradation rate—(i) Required testing.* (A) Biodegradation rate tests shall be conducted with anthraquinone at concentrations at or below the water solubility as determined under the testing specified in paragraph (c)(1)(i) of this section, and close to the predicted environmental concentration in sediment, i.e., 0.1 ppm, in accordance with the test guideline described in a study by A.W. Bourquin et al., entitled "An Artificial Microbial Ecosystem for Determining Effects and Fate of Toxicants in a Salt-Marsh Environment", if EPA determines that the total annual volume of anthraquinone manufactured and imported in the United States during a single calendar year exceeds 3 million pounds, and any of the following conditions is met: (1) the  $LC_{50}$  of a fish or daphnid or oyster, as determined by the acute toxicity tests conducted in accordance with paragraphs (c)(2) and (3) of this section respectively, is less than 100 times the predicted environmental concentration (PEC) in water, i.e., less than 500 ppb; (2) the  $LC_{50}$  of *Rhepoxynius*, as determined by the sediment toxicity test conducted in

accordance with paragraph (c)(4) of this section, is less than 100 times the PEC in sediment, i.e., less than 10 ppm; or (3) the oyster bioconcentration factor, as determined by the oyster bioconcentration test conducted in accordance with paragraph (c)(5) of this section, is greater than 3,000. The Bourquin et al. article, published in *Developments in Industrial Microbiology*, vol. 18, chapter 11, 1977, is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the Federal Register. Copies of the incorporated material may be obtained from the Document Control Officer (TS-793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the Society for Industrial Microbiology, P.O.B. 12534, Arlington, VA 22209-8534.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) Biodegradation rate tests shall be completed and the final results submitted to the Agency within 1 year of the date of a Federal Register notice announcing that the total annual volume of anthraquinone manufactured and imported in the United States during a single calendar year exceeds 3 million pounds.

(C) Quarterly progress reports shall be submitted.

(3) *Fish chronic toxicity—(i) Required testing.* (A) Fish chronic toxicity tests shall be conducted with anthraquinone in accordance with the test guideline specified under § 797.1800 of this chapter and using modifications of the fish chronic toxicity test for anthraquinone specified in paragraph (d)(3)(i)(B) of this section, if EPA determines that the total annual volume of anthraquinone manufactured and imported in the United States during a single calendar year exceeds 3 million pounds, and if the most sensitive fish species (with the lowest median lethal concentration ( $LC_{50}$ ) in the acute toxicity tests conducted in accordance with paragraph (c)(2) of this section, has an  $LC_{50}$  less than 100 times the predicted environmental concentration (PEC) in water, i.e., less than 500 ppb.

(B) Modifications. The following modifications for testing anthraquinone are required.

(1) At least five test concentrations shall be used. The highest concentration



shall be less than or equal to the solubility limit of anthraquinone as determined under the testing specified in paragraph (c)(1)(i) of this section.

(2) At least one test concentration shall be between 1 ppb and 10 ppb.

(3) Concentrations of dissolved test chemical. The requirement under § 797.1600 of this section is modified to require that the concentration of test substance shall be measured in each test chamber and the delivery chamber before the test to ascertain whether it is in solution. The total and dissolved (e.g., filtered) concentrations shall be determined.

(4) The test shall be performed under flow-through conditions; the minimum volume of the test solution delivered to each test aquarium in 24 hours shall be 5 times the aquarium volume.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) Fish chronic toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the date of a Federal Register notice announcing that the total annual volume of anthraquinone manufactured and imported in the United States during a single calendar year exceeds 3 million pounds.

(C) Quarterly progress reports shall be submitted.

(4) *Daphnid chronic toxicity—(i) Required testing.* (A) Daphnid chronic toxicity test shall be conducted with anthraquinone using *Daphnia magna* or *D. pulex* in accordance with the test guideline specified under § 797.1330 of this chapter and using modifications of the daphnid chronic toxicity test for anthraquinone specified in paragraph (d)(4)(i)(B) of this section, if EPA determines that the total annual volume of anthraquinone manufactured and imported in the United States during a single calendar year exceeds 3 million pounds, and the median effective concentration (EC<sub>50</sub>) determined in accordance with paragraph (c)(3) of this section is less than 100 times the PEC in water, i.e., less than 500 ppb.

(B) Modifications. The following modifications for testing anthraquinone are required.

(1) At least five test concentrations shall be used. The highest concentration shall be less than or equal to the solubility limit of anthraquinone as determined under the testing specified in paragraph (c)(1)(i) of this section.

(2) At least one test concentration shall be between 1 ppb and 10 ppb.

(3) pH of the test solution. The pH of the test solution shall be 7.

(4) Concentration of dissolved test chemical. The requirement under

§ 797.1330 of this chapter is modified to require that the concentration of test substance shall be measured in each test chamber and the delivery chamber before the test to ascertain whether it is in solution. The total and dissolved (e.g., filtered) concentration shall be determined.

(5) The delivery and test chambers shall be covered.

(6) The test shall be performed under flow-through conditions; the minimum volume of the test solution delivered to each test aquarium in 24 hours is 5 times the aquarium volume.

(7) The stability of the stock solution for the duration of the experiment must be analyzed and reported.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 30 days prior to initiating testing.

(B) The Daphnid chronic toxicity test shall be completed and the final results submitted to the Agency within 1 year of the date of a Federal Register notice announcing that the total annual volume of anthraquinone manufactured and imported in the United States during a single calendar year exceeds 3 million pounds.

(C) Quarterly progress reports shall be submitted.

(Information collection requirements have been approved by the Office of Management and Budget under control numbers 2070-0033 and 2070-0067.)

[FR Doc. 85-26527 Filed 11-5-85; 8:45 am]

BILLING CODE 5560-50-M

#### 40 CFR Part 180

[PP 5E3245/P377; FRL-2919-8]

#### Exemption From the Requirement of a Tolerance for Sodium Chlorite

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

**SUMMARY:** This document proposes that an exemption from the requirement of a tolerance be established for residues of the disinfectant sodium chlorite when used as a seed-soak treatment on crop group *Brassica* (cole) leafy vegetables and radishes. This proposal, which eliminates the need to establish a maximum permissible level for residues of sodium chlorite in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**DATE:** Comments, identified by the document control number [PP 5E3245/P377], must be received on or before December 6, 1985.

#### ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not market confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

#### FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 5E3245 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of New York.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of an exemption from the requirement of a tolerance for sodium chlorite when used as a seed-soak treatment in the growing of the raw agricultural commodities crop group *Brassica* (cole) leafy vegetables and radishes. Member commodities of the crop group *Brassica* (cole) leafy vegetables listed in 40 CFR 180.34 include broccoli, Brussels sprouts, cabbage, cauliflower, collards, kale, kohlrabi, mustard greens and rape greens.

The data submitted in the petition and other relevant material have been



evaluated. The pesticide is considered useful for the purpose for which the exemption is sought.

Sodium chlorite is applied as a seed-soak treatment to control *Xanthomonas campestris* (black rot). There is no expectation of sodium chlorite residues in *Brassica* (cole) leafy vegetables and radishes grown and harvested from treated seeds. Sodium chlorite is an indirect food substance affirmed as generally recognized as safe (GRAS) for levels from 125 to 250 parts per million (ppm) as a slimicide in the manufacture of paper and paperboard that come in contact with food (21 CFR 186.1750). Lactic acid, the activator, is cleared under 40 CFR 180.1001. Calcium hypochlorite, a related oxidizing agent, is exempt from the requirements of a tolerance when used on food commodities (postharvest use on potatoes) or as a sanitizing and bleaching agent (40 CFR 180.1054 and 180.1001). Sodium hypochlorite is considered safe when used as a postharvest fungicide (40 CFR 180.2).

Based on the above information considered, the Agency concludes that the proposed exemption from the requirement of a tolerance would protect the public health. Therefore, it is proposed that the exemption be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number (PP 5E3245/P377). All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant

economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

#### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 24, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

#### PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1070 is added to read as follows:

#### § 180.1070 Sodium chlorite; exemption from the requirement of a tolerance.

Sodium chlorite is exempted from the requirement of a tolerance for residues when used in accordance with good agricultural practice as a seed-soak treatment in the growing of the raw agricultural commodities crop group *Brassica* (cole) leafy vegetables and radishes.

[FR Doc. 85-26452 Filed 11-5-85; 8:45 am]

BILLING CODE 5560-50-M

#### 40 CFR Part 716

[OPTS-84020; FRL-2907-9]

#### Submission of Lists and Copies of Health and Safety Studies on Certain Substances Subject to the 1984 RCRA Amendments

##### Correction

In FR Doc. 85-23891 beginning on page 40874 in the issue of Monday, October 7, 1985, make the following corrections:

On page 40874, first column, in the "SUMMARY" paragraph, remove "85T-833" at the end of the paragraph. In the third column, in the table, under the heading for "Name", twelfth line, "Ethane, 1, 1-" should have read "Ethane, 1, 1' -".

BILLING CODE 1505-01-M

#### 40 CFR Parts 798 and 799

[OPTS-42074; FRL-2695-4]

#### Cumene; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA is proposing that manufacturers and processors of cumene (isopropyl benzene, CAS No. 98-82-8) be required, under section 4 of the Toxic Substances Control Act (TSCA), to perform testing for pharmacokinetics, subchronic toxicity, oncogenicity, mutagenicity, neurotoxicity, developmental toxicity and reproductive toxicity, if triggered, acute and chronic aquatic toxicity in saltwater and freshwater fish and invertebrates, and biodegradation and volatilization from water. This proposed rule is in response to the Interagency Testing Committee's (ITC's) designation of cumene for priority consideration for health and environmental effects testing.

**DATES:** Submit written comments on or before January 6, 1986. If persons request an opportunity to submit oral comments by December 23, 1985, EPA will hold a public meeting on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VIII of this preamble.

**ADDRESS:** Submit written comments, identified by the document control number (OPTS-42075), in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

**SUPPLEMENTARY INFORMATION:** EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the ITC's designation of cumene for health and environmental effects testing consideration.

#### I. Introduction

##### A. ITC Recommendation

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.



The ITC designated cumene (CAS No. 98-82-8) for priority consideration in its 15th report submitted to EPA on November 6, 1984. The report was published in the Federal Register of November 29, 1984 (49 FR 46939). The ITC recommended that cumene be considered for health effects testing for short-term genotoxicity, chronic toxicity including oncogenicity, teratogenicity, and reproductive effects; and environmental effects testing for acute and chronic toxicity to saltwater and freshwater fish and invertebrates. The bases for these recommendations were as follows: annual production capacity of 4 to 5 billion pounds, potential for occupational and environmental exposure, and insufficient data to assess the risk of cumene exposure to human health and the environment.

#### B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1) (A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1) (B)(i), EPA considers only production, exposure, and release information to determine

whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under sections 4(a)(1) (A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1) (A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The section 4(a)(1) (A) findings are discussed at 45 FR 48524 and 46 FR 30300, and the section 4(a)(1) (B) findings are discussed at 46 FR 30300.

In evaluating the ITC's testing recommendations concerning cumene, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration and any public comments on the ITC's recommendation; production volume, use, exposure, and release information reported by manufacturers of cumene under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning cumene; and published and unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule, EPA is proposing health and environmental effects testing requirements for cumene under sections

4(a)(1) (A) and (B). By these actions, EPA is responding to the ITC's designation of cumene for priority testing consideration.

## II. Review of Available Data

### A. Profile

Cumene is a colorless liquid with a sharp, penetrating odor; the air odor threshold is 0.88 ppm (Ref. 1). At 20 °C cumene has a water solubility of 50 mg/l (Ref. 2), a vapor pressure of 3.2 mm Hg (Ref. 3), and a density of 0.86 g/cm<sup>3</sup> (Ref. 4). The log octanol/water partition coefficient ( $K_{ow}$ ) is reported as 3.51 (Ref. 2) and 3.66 (Ref. 5). A log soil/sorption coefficient ( $K_{oc}$ ) of 3.45 was estimated by EPA, and a bioconcentration factor (BCF) of 340 was estimated from the log  $K_{ow}$  (Ref. 80).

### B. Production

Cumene is commercially produced by alkylating benzene under elevated temperature and pressure with propylene by a Friedel-Crafts reaction using a solid phosphoric acid catalyst (Ref. 4). Cumene is separated from the propylene and benzene reactants by distillation. Cumene is also present in crude oil and may be found as a minor component of finished petroleum products.

Cumene is produced domestically by 10 corporations with a combined annual production capacity of 4 to 5 billion pounds (Refs. 7 and 8). An additional 900 million pounds per year capacity is on reserve. Approximately 339 million pounds were imported during 1984 (Ref. 7). The demand for cumene was 3.3 billion pounds and 3.4 billion pounds for 1983 and 1984, respectively. This level is expected to increase to 4.7 billion pounds in 1988 with an average growth rate of 4 percent per year through 1988 (Ref. 7).

Cumene domestic producers, production sites and capacities, and use are summarized in Table 1.

TABLE 1.—U.S. CUMENE PRODUCTION CAPACITY

Producer	Location	Capacity <sup>1</sup>	Use
Amoco Chemical Corp.	Texas City, TX	30	Alkylated styrene.
Apex Oil Co.*	Blue Island, IL	120	Phenol <sup>2</sup> .
Ashland Oil, Inc.	Cattlettsburg, KY	400	Sold.
Chevron Corp.*	Philadelphia, PA	450	Do.
	Port Arthur, TX	450	Do.
Georgia Gulf Corp.	Pasadena, TX	800	Phenol.
Koch Industries, Inc.	Corpus Christi, TX	400	Sold.
Shell Oil Co.	Deer Park, TX	700	Phenol.
Texaco, Inc.	Westville, NJ*	150	Do.
	El Dorado, KS	135	Do.
Union Pacific Co.*	Corpus Christi, TX	400	Sold.

<sup>1</sup> Millions of pounds per year for 1984.

<sup>2</sup> Subsidiary of Clark Chemical Co.

<sup>3</sup> Acetone also produced.

<sup>4</sup> Subsidiary of Gulf Oil Corp.

<sup>5</sup> Under acquisition by Coastal Refining & Marketing, Inc. (Ref. 81)

<sup>6</sup> Subsidiary of Champlin Petroleum Co.



### C. Use

More than 98 percent of the cumene produced in the United States is used to manufacture phenol by the cumene hydroperoxidation process (Refs. 7 and 8). Acetone is also produced by this process. Cumene is first oxidized to cumene hydroperoxide and then subjected to acid cleavage yielding a crude reaction mixture of phenol and acetone. Neutralization and distillation of the mixture removes impurities such as acetophenone, cumyl phenols, dimethyl-phenylcarbinol, and alpha-methylstyrene.

Cumene is also used to manufacture alpha-methylstyrene and as a chain inhibitor in the polymer industry (Ref. 7). It has been used to produce sulfonated cumene and used in the manufacture of liquid detergents and surfactants. Cumene has also been used as a high-octane aviation fuel additive (Ref. 4). Additionally, cumene is used as a solvent in perfumes and pharmaceuticals (Ref. 7).

### D. Exposure and Release

From the occupational data reported by industry, it appears that cumene production plant, maintenance, marine dock, and shipboard workers are exposed to cumene. The National Occupational Hazard Survey (NOHS) estimated that 863 workers were exposed to cumene in the workplace during 1972-1973 (Ref. 9). Cumene levels measured in the breathing zone of workers at the manufacturing sites are reported to be less than 20 ppm. Air samples taken at two refineries showed a time-weighted average (TWA) ranging from below the detection limit (limit not specified) to 2.4 ppm cumene with a mean TWA of <0.1 ppm. On oil tankers cumene levels as high as 20 ppm were detected (Ref. 10). Koch Refining Co. (Ref. 11) reported that samples from an unspecified area of the production plant showed no more than 0.5 ppm cumene in the air. Twenty workers in a Texaco refinery were reportedly exposed to 3 ppm cumene or less (Ref. 12). The American Petroleum Institute (API) (Ref. 13) reported that gasoline truck drivers were exposed during a 12-hour period to less than 0.1 ppm TWA cumene. Air samples taken in manufacturing and market distribution points (marine docks) involving cumene had an average TWA of 0.65 ppm with a maximum of 78 ppm (Ref. 18).

Approximately one half of the cumene manufacturing plants are located in a 2 major metropolitan areas increasing the potential human exposure to 15 to 16 million people. Estimated cumene concentrations in the ambient air from

these areas within a 1 and 5 km radius range between 17 and 289  $\mu\text{g}/\text{m}^3$  and 2.9 and 15.2  $\mu\text{g}/\text{m}^3$ , respectively, for a worst case model (Ref. 18).

Synthetic organic chemical plants (SOCP) which produce cumene release about 1.1 million pounds per year in fugitive emissions as estimated from leaks in fittings for valves, flanges, and pumps (Ref. 18).

Cumene may also be released during the production of phenol and acetone by the cumene hydroperoxidation process. For every kilogram of phenol produced, approximately 1 gram of cumene is released to the atmosphere (Ref. 16). A reported 2.05 billion pounds of phenol were produced from cumene in the United States in 1983 (Ref. 17). Therefore, it was estimated that 2 million pounds of cumene were released into the air in 1983 from the production of phenol (Ref. 18).

As a natural component of crude oil and the resultant petroleum products, cumene can be detected in the exhausts of automobile, jet engines, and outboard motors (Refs. 19 through 21). Land transportation vehicles alone were estimated to contribute 15 million pounds of cumene to the atmosphere in 1983 (Ref. 18).

Evidence suggests widespread release of cumene to aquatic environments. Cumene was detected in 204 of 4,000 samples of wastewater taken from a variety of industrial processes throughout the United States. Levels as high as 17.9 ppm were found in wastewaters from organic and plastics industries. Other industries whose wastewaters contained cumene include timber products, fruit and vegetable processing plants, paving and roofing, pesticides and pharmaceuticals, manufacturing, shipbuilding. It has also been found in the effluents from publicly owned treatment works (Ref. 22).

Several monitoring studies have shown cumene contamination of groundwater and other drinking water supplies (Refs. 23 through 30). Cumene was detected in groundwater supplies in the State of New York at a level of 290 ppb (Ref. 23). Cumene was also detected in Wyoming groundwater samples collected in wells near a coal gasification site 15 months after the completion of gasification. Cumene levels ranged from 19 to 59 ppb in the 3 wells which were sampled (Ref. 26). The presence of cumene in the well samples could also be attributed to shale oil deposits in the area.

Keith et al., Coleman et al., and Kingsley et al. (Refs. 28 through 30) reported the presence of cumene in finished drinking water samples.

Cumene levels of 0.01 ppb were measured in drinking water from Terrebonne Parish, LA (Ref. 28). The drinking water for Cincinnati, OH was reported to contain 0.01 to 0.5 ppb (Refs. 29 and 30). Terrebonne Parish receives its drinking water from sources generally contaminated by municipal waste; Cincinnati water is contaminated predominantly by industrial waste. Both of these areas acquire their water supplies from rivers. This would suggest cumene contamination of surface water. Surface water monitoring data in the United States were not found in the literature searched.

### E. Health Effects

1. *Absorption and distribution.* Senczuk and Litewka (Ref. 31) exposed 10 human volunteers (5 men and 5 women between 20 and 35 yrs old) to atmospheres of 240, 480 and 720  $\text{mg}/\text{m}^3$  (50, 100, and 150 ppm) cumene for 8-hour sessions. Each volunteer was exposed to one of the three concentrations every 10 days. The average retention of cumene vapors in the respiratory tract was about 50 percent. The total dose of cumene absorbed by the lungs during an 8-hour exposure to 240, 480, or 720  $\text{mg}/\text{m}^3$  was 270, 526, or 788 mg, respectively, in women and 466, 934, or 1,400 mg, respectively, in men. The difference in absorption between the sexes was not explained.

Evidence of dermal absorption of cumene is provided in a study by Valette and Cavier Cavier (Ref. 32). Cumene (0.2 ml) was applied to a shaved area of rat epidermis. The rate of absorption was assessed by measuring the sciatic nerve response to electrical stimulation. Significant differences in nerve conduction were noted 20 minutes after cumene administration. Toxicity studies which administer cumene orally suggest that absorption of cumene in the gastrointestinal tract occurs but the level of absorption has not been quantified (Refs. 33 and 34).

Following absorption cumene generally tends to localize in tissues with a high-lipid content (Ref. 35). In two rats exposed to 500 ppm cumene vapor 8 hrs/day for 10 days, the highest levels of cumene were found in the spleen, bone marrow, and liver. Lesser amounts were detected in the brain, cerebellum (presumed to be analyzed separately from the brain), kidneys, and blood (Ref. 36).

2. *Metabolism and elimination.* In humans exposed to cumene vapors (240, 480 and 720  $\text{mg}/\text{m}^3$ ) for 8-hour sessions, the urinary excretion rate of the metabolite, 2-phenyl-2-propanol, rapidly increased during the exposure period.



Following cessation of exposure, the rate of the metabolite excretion approached zero. The total amount of excreted 2-phenyl-2-propanol was found to be directly proportional to the exposure concentration and the amount of absorbed cumene. No other metabolites were identified (Ref. 31).

Smith et al. (Ref. 37) observed at least 3 metabolites in the urine of rabbits administered an oral dose of 450 mg cumene/kg body weight. Robinson et al. (Ref. 33) further characterized these urinary metabolites as 40 percent 2-phenyl-2-propanol, 25 percent 2-phenyl-1-propanol, and 25 percent 2-phenylpropanoic acid. Each metabolite was excreted on the glucuronide conjugate. Rats given an oral dose of 100 mg cumene/kg body weight excreted conjugates of 2-phenyl-1-propanol. The glucuronide of 2-phenyl-2-propanol was detected in only 1 of 6 animals; no other phenolic compounds were detected (Ref. 34).

Cumene, administered intraperitoneally to rats, increased the urinary excretion of thio (SH) compounds. A mean value of 73 mmol SH per mol creatinine was measured in the urine of rats following a 1 mmol cumene/kg body weight dose. Three percent of the dose was excreted as mercapturic acid. Values for other aralkyl compounds tested ranged from 6 to 312 mmol SH per mol creatinine. These results indicated to the investigators that the positioning of the methyl groups would affect the metabolism of the aromatic hydrocarbon (Ref. 38).

The Agency has determined that the pharmacokinetic testing reported herein does not adequately assess the pharmacokinetic behavior of cumene following oral or inhalation exposures. The reported studies do not contain sufficient information concerning study design, analytical methods, or use of a radiolabel for determining cumene distribution or metabolites.

3. *Acute toxicity.* Gerarde (Ref. 35) reported that 6 of 10 rats died following an oral dose of 4.3 g cumene/kg body weight. The principal cause of death was hemorrhage of the lungs accompanied by adrenal, thymus, and bladder hemorrhaging. Other effects included enlarged, fatty livers; enlarged and congested spleens; hyperemia in the brain, spinal cord, stomach and intestines; and leukocytosis. Oral LD<sub>50</sub>s of 2.7 g and 1.4 g/kg cumene in rats also have been reported (Refs. 39 and 40). Signs of intoxication included weakness, ocular discharge, collapse and death.

A 4-hour exposure to 8,000 ppm cumene resulted in the death of 4 of 6 rats (Ref. 41). In a separate study, an

LD<sub>50</sub> of 800 ppm cumene was observed in rats exposed for 16 hrs. Symptoms which preceded death were nervousness, intoxication, incoordination, and somnolence (Ref. 39). No histopathology was reported for these experiments. In mice exposed to atmospheres of 1,200 to 1,400 ppm cumene for 7 hours, an LD<sub>50</sub> of 2,000 ppm was determined (Ref. 42). Dermal LC<sub>50</sub>s of 3,150 mg/kg and 10,000 mg/kg have been reported in rabbits (Refs. 39 and 41). These data are sufficient to assess the acute toxicity of cumene following oral, dermal, and inhalation exposure.

Non-lethal acute effects resulting from cumene exposure include narcosis in mice exposed to 4,000 or 5,000 ppm cumene vapor for 2 hours and bradypnea in mice exposed to 1,210 ppm cumene for 30 minutes (Refs. 43 and 44). Concentrations of 2,490 ppm adversely affected the respiration rate of 50 percent of an unspecified number of mice exposed for 30 minutes (Ref. 44).

4. *Subchronic toxicity.* Fabre et al. (Ref. 36) exposed rabbits (number not specified) to atmospheres of 6.5 mg cumene/l for 130 to 180 days. The animals showed no abnormal behavior patterns. Weight gain was also normal. No other information was provided.

In a subsequent study, an undetermined number of rats were exposed to 6.5, 4.0, or 2.5 mg cumene/l air. Three of the rats in the 6.5 mg/l group exhibited "some nervousness" along with intoxication, impaired locomotion, incoordination, and somnolence following exposure for a few hours. After 6 to 16 hours all the exposed animals died. Animals exposed to atmospheres of 4 mg/l for up to 16 hours also died. Thirty-six animals in the 2.5 mg/l group showed no "external signs of poisoning." Following an initial weight loss, animals in the 2.5 mg/l group gained weight regularly throughout the 160-day exposure period.

Histopathological examination of animals revealed no significant lesions in brain, cerebellum (presumed to be analyzed separately from the rest of the brain), liver heart, stomach, intestine, bone marrow, spleen, kidney, or reproductive organs. Passive congestion was seen in the lung, liver, spleen, kidney, and adenals (Ref. 36).

This study (Ref. 36) was considered inadequate with regard to characterizing the health effects of cumene exposure because of poor study design and statistics. While the report stated that 36 animals were exposed to 2.5 mg/l, no sample size was given for the higher concentrations. The animals used for histopathological analysis were selected according to different conditions of "poisoning." The number of animals

examined per concentration level was not stated, nor was the species (rat, rabbit, or both) examined specified. There was no mention of the use of control animals in the study.

Another subchronic study was also considered inadequate owing to lack of information in the report. Jenkins et al. (Ref. 45) exposed rats and guinea pigs (15/species/concentration), dogs, (2/concentration), and monkeys (3/concentration) to atmospheres of 1,195 mg/m<sup>3</sup> cumene vapor 8 hours/day, 5 days/week for 30 exposures; or 148 mg/m<sup>3</sup> or 18 mg/m<sup>3</sup> cumene vapor continuously for 90 or 130 days. A similar or greater number of animals of each species served as controls. Sex of the animals was not given. Results showed normal weight gain throughout the exposure period. Necropsy and histopathological examinations of the brain and spinal cord from the monkeys and dogs were conducted. Heart, lung, liver, spleen, and kidney were taken from all species. Hematological analyses of the rats, guinea pigs and dogs were also performed. Results from all of these analyses were considered "essentially negative." No mention of statistical analysis was made. No other information was given in the report.

Wolf et al. (Ref. 40) investigated the subchronic effects of cumene administered orally. Cumene in olive oil was administered by stomach tube to rats (10 females/dose) at doses of 154, 462, or 769 mg/kg/day for a total of 139 doses over a 194-day period. A group of 20 rats served as controls and were fed doses of 2.5 ml olive oil on the same schedule as the treated group. Appearance, behavior, food consumption, and weight were monitored throughout the study. Hematological parameters were measured in "selected" animals in each dose group after 20, 40, 80, and 130 doses. Moribund animals and those animals surviving all 139 doses were sacrificed and examined for gross or histopathological effects. Results showed no treatment-related effects with the exception of increased kidney weight in the 462 and 769 mg/kg/day dose groups. Because there are flaws in the experimental design of this study, it cannot be considered adequate in determining the subchronic toxicity of cumene. The report lists only 2 organs as being examined, the liver and kidney. No other tissues or organs were discussed. The study also fails to explain how the animals were "selected" for hematology. In addition, only females were used in the study thus excluding the investigation of differential toxicity between the sexes.



5. **Chronic toxicity.** Pertinent data on the chronic toxicity of cumene were not found in the literature searched or submitted under the TSCA section 8(d) reporting requirement for this chemical.

6. **Mutagenicity.** Cumene has been tested for mutagenicity in the bacterium *Salmonella typhimurium* with and without metabolic activation. Most of these studies were found to be negative in tester strains TA 98, TA 100, TA 1535, TA 1537, and TA 1538 (Refs. 39, 46, and 47). Monsanto (Ref. 39) initially found a significantly higher number of revertants in test strains TA 100 and TA 1535, which were cultured with 0.17 mg cumene/plate. Upon retesting, the mutagenicity of cumene was considered negative.

A positive result for cumene mutagenesis in a spot test with *Salmonella* tester strain TA 100 was reported (Ref. 48). No further details regarding experimental design or results were provided in the conference proceedings of the 1975 Environmental Impact of Water Chlorination, where the study was reported.

Gulf Oil Products (Ref. 49) reported in a TSCA section 8(e) submission that cumene tested positive in a cell transformation study using mouse embryo BALB/3T3 cells. BALB/3T3 cells are reported to have a low incidence of spontaneous transformation and a high incidence of contact inhibition (Ref. 50). Cumene concentrations of 5, 20, 60, and 90 µg/ml were tested. Cumene was emulsified in a F68 polyol vehicle. Cells were incubated in cumene media (17 plates/dose) for 2 days and then transferred to fresh media for an additional 8-day incubation period. Two of the 17 plates per dose were then fixed and stained. The remaining cultures were allowed to incubate until day 29 of the study. These cultures were then fixed and stained for counting transformed foci. At a concentration of 60 µg/ml, cumene exhibited some cytotoxicity with only a 22-percent rate of colony formation. The test for transformation was considered positive if the increase in a population of highly polar, fibroblastic, criss-crossed array of cells exposed to the highest level of cumene was twice (2x) that of the control value or if the ratio of these cell types between 2 consecutive levels was greater than or equal to 2. Under these criteria cumene tested positive for transformation, showing more than a 2x increase over controls at 60 µg/ml. No colonies formed at the 90-µg/ml exposure level. Positive (1 µg/ml of 3-methylcholanthrene) and negative (media and 0.04 percent F68) control results indicated proper functioning of

the assay system. This study is considered adequate and suggests that cumene may produce oncogenic effects.

Another TSCA section 8(e) submission from Gulf Oil Products (Ref. 51) reported a position response for cumene in an unscheduled DNA synthesis (UDS) assay with rat hepatocytes. This test measures excision repair of DNA after damage by chemical or physical agents (Ref. 52). Primary hepatocytes were isolated from the liver of a rat. Cells were incubated in cumene concentrations of 8, 16, 32, 69, or 128 µg/ml with 3 cultures per concentration. Cumene was emulsified in a F68 polyol vehicle. Positive (0.05 µg/ml of 2-acetylaminofluorene) and negative (vehicle and media) controls were used for comparison. Using autoradiography UDS was determined by counting grains overlying nuclei and subtracting the background counts. Two criteria were considered in the evaluation of test results. A test was considered positive for UDS if the mean net nuclear grain count at any exposure level exceeded the media control by 6 grains (Ref. 53), or if the percentage of cells in repair at any exposure level was significantly ( $p < 0.01$ ) greater than the negative control. The first criterion did not indicate a positive finding for this study. The second criterion, however, did show a positive result. Cells cultured in 16 µg/ml cumene showed a significant increase in repair (28.7 percent) as compared to control cultures. Forty percent of the cells exposed to 32 µg/ml cumene were found to be in repair, thus this test was reported to be positive for cumene.

7. **Oncogenicity.** Pertinent data regarding the oncogenicity of cumene were not found in the literature searched or submitted under the TSCA section 8(d) reporting requirement for this chemical. As a result of the positive findings in the cell transformation and UDS assays, the Agency has determined a need for oncogenicity testing.

8. **Developmental and reproductive toxicity.** It was reported in a Russian abstract (Ref. 54) that a 4-month inhalation exposure to cumene at an unspecified maximum permissible concentration increased fetal mortality in pregnant rats from 7.5 to 39.3 percent. An increase in the frequency of developmental abnormalities from 3 to 11 percent was also reported. The type of developmental effects was not specified, and no further details, such as whether the developmental abnormalities were accompanied by maternal toxicity were given. As a result of the lack of information in this study, it is not considered adequate to assess the

potential toxicity of cumene to developmental and reproductive processes.

No other information on the developmental or reproductive toxicity of cumene was found in the literature searched or submitted under the TSCA section 8(d) reporting requirement for this chemical.

With the exception of the acute inhalation studies, data from the reported health effects studies do not adequately determine or predict the toxicity of cumene to human health.

#### F. Environmental Effects

1. **Microorganisms.** Erben (Ref. 55) investigated the effects of cumene on the survival of a rotatoria, *Dicranophorus forcipatus*, under a closed laboratory rearing system. The organisms were exposed to cumene concentrations (v/v) of 0.02, 0.2, and 2.0 percent. Test populations were housed under dark conditions, without running water or aeration. The greatest level of mortality was observed during the first 48 hours of the study. Complete mortality was not obtained after 144 hours of exposure. It is not possible to quantify the toxic response to cumene based on the data provided. The results are questionable, as the data are based upon test solutions of cumene that are 1 to 3 orders of magnitude greater than the 50 mg/l solubility of cumene in water.

The effects of cumene on the photosynthetic rate of two algal species *Chlorella vulgaris* and *Chlamydomonas angulosa* have been studied (Ref. 2). The algal cultures were incubated in glass-stoppered flasks at 19 °C for 3 hours. Cumene concentrations of 1, 12.5, 25, 37.5, and 50 ppm were tested. The extrapolated median effective concentrations ( $EC_{50}$ ) for *C. vulgaris* and *C. angulosa* were 8.76 and 21.24 ppm, respectively.

The toxicity of cumene to two species of protozoans was investigated in open and closed systems (Ref. 56). In the open test system, an inoculum of approximately 20 cells of *Colpidium colpoda* was exposed to solutions of 2.5, 5, 10, 15, increasing at increments of 5 up to 45 ppm cumene in a cerophyl medium for 18 hours. A median lethal concentration ( $LC_{50}$ ) of 0.012 ppm was reported; however, this result was negated by a bacterial contamination in the culture.

In a closed system, where the organisms survived solely on dissolved oxygen, a morphologically similar protozoan to *C. colpoda*, *Tetrahymena ellioti*, was used as the test organism (Ref. 56). Test concentrations and incubation conditions were not reported.



Using cessation of ciliary movement as the criterion for cell death, a 24-hour  $LC_{50}$  was reported as 3.01 ppm cumene in a cerophyl medium. The organisms were reported to survive at lower concentrations; complete mortality reportedly occurred at levels higher than 3 ppm.

2. *Plants*. Data on the toxicity of cumene to plants were not found in the literature searched.

3. *Birds*. An 18-hour median lethal dose ( $LD_{50}$ ) of 98 mg cumene/kg was determined in wild-trapped red-wing black birds. A cumene/propylene glycol solution was administered by gavage to the red-wing black birds preconditioned to captivity for 2 to 6 weeks (Ref. 57).

4. *Freshwater fish and invertebrates*. Juhnke and Luedemann (Ref. 58) compared  $LC_{50}$  values for cumene determined in the golden orfe in two independent laboratories. Juhnke reported an  $LC_{50}$  of 47 mg/l for cumene; Luedemann reported a value of 207 mg/l which substantially exceeds the water solubility of cumene. The tests were reportedly conducted under comparable conditions. Length of exposure was not indicated. An  $LC_{50}$  of 20 to 30 mg/l has been reported for the fathead minnow. No other details of the study were provided (Ref. 59).

The acute toxicity of cumene to *Daphnia magna* has also been determined in closed and open systems (Refs. 60 and 61). In the closed system, 10 animals per vial were exposed to various concentrations of cumene for 48 hours. Death was defined as immobility. The 48-hour  $LC_{50}$  for cumene was determined to be 0.6 ppm. Adverse effects, which were not described, were reported to be evident in animals exposed to sublethal concentrations (Ref. 60). The specific range of cumene concentrations tested was not provided. The vials had no air spaces and were not aerated. The temperature was maintained at 23 °C. The pH, however, was not held constant and dropped from 7 to 5 units. The animals were not fed during the 48-hour exposure period.

Bringmann and Kuehn (Ref. 61) established a 24-hour  $EC_{50}$  of 91 ppm cumene in *D. magna*. Animals were exposed using an open test system. The  $EC_{50}$  was extrapolated graphically or established as the geometric mean of the  $EC_0$  and  $EC_{100}$ . The tests were run with ten 24-hour-old animals per concentration; the pH was maintained at  $8.0 \pm 0.2$ . It is unclear whether the reported  $EC_{50}$  cumene level represents an initial, final or average concentration. However, it is roughly twice the reported water solubility of cumene (Ref. 2). No mention is made of analytically determining the cumene

concentration during the study period. Therefore, this study does not adequately assess cumene toxicity to freshwater invertebrates.

5. *Marine vertebrates and invertebrates*. No information on the toxicity of cumene to marine vertebrates was found in the literature searched.

Le Roux (Ref. 62) investigated the effect of cumene on the growth rate of mussel larvae (*Mytilus edulis*). The larvae were exposed to cumene concentrations of 0, 1, 10, and 50 ppm in seawater. No consistent statistical relationship between change in growth rate and cumene concentration could be established. It was reported that the growth rate of cumene-exposed larvae was generally greater than that of control larvae.

In a brine shrimp bioassay, shrimp eggs were placed in a hatching apparatus 48 hours prior to toxicity testing. Upon hatching, a suspension of 30 to 50 shrimp/ml was introduced into bottles containing cumene concentrations of 1 to 10,000 mg/l. After 24 hours the number of live and dead shrimp was compared. The 24-hour tolerance limit for brine shrimp to cumene was extrapolated graphically from the screening data to equal 110 mg/l (Ref. 63). The solubility of cumene in synthetic saltwater was measured in this study to be 500 mg/l. A more realistic solubility of cumene in seawater is 42.5 mg/l (Ref. 18).

As a result of the varying data and flawed study designs, these environmental effects studies were not considered adequate for assessing the acute toxicity of cumene to aquatic organisms.

No information on the chronic toxicity of cumene to aquatic organisms was found in the literature searched or submitted under the TSCA section 8(d) reporting requirement for this chemical.

#### G. Chemical Fate

Cumene enters the environment as a vapor or in wastewaters. In air, the dominant degradation pathway for cumene is expected to be hydroxyl radical attack; nitrate radical reaction may also occur, especially at night. Transport mechanisms of cumene out of air may include precipitation scavenging and dry deposition. In water, biodegradation appears to be the dominant degradation mechanism. Oxidation and photolysis appear to be unimportant. The dominant transport mechanism from water is volatilization (Ref. 64). In soil, the major degradation mechanism also appears to be biodegradation, with volatilization and leaching the major transport mechanisms from soil to air and water.

Assuming uniform initial environmental distribution the subsequent partitioning of cumene in the environment is estimated to be 59.6 percent in air, 40.2 percent in water, and 0.1 percent in soil. The deposition of cumene from air to water was estimated to be 0.09 parts per trillion. Cumene will react with hydroxyl (HO) and nitrate ( $NO_3$ ) radicals during the daytime and nighttime, respectively. Using a HO radical concentration of  $1 \times 10^6$  molecules  $cm^{-3}$  (polluted atmospheres) and  $0.5 \times 10^6$  molecules  $cm^{-3}$  (unpolluted atmospheres) and the Revishankara et al. (Ref. 6) rate constant ( $7.79 \pm 0.4 \times 10^{-12} cm^3 molec^{-1} s^{-1}$ ), the half-life of cumene in the troposphere was estimated to be 25 hours in a polluted atmosphere and 49 hours in an unpolluted atmosphere (Ref. 18).

Biodegradation and volatilization are the major removal processes from water. The cumene volatilization half-life in water was estimated to be 5 to 14 days depending on the type of ecosystem, (i.e. pond, lake, river), and various aquatic parameters (Ref. 18). Actual monitoring data of cumene's volatilization rate in water were not found in the literature searched.

Cumene degradation has been studied in groundwater and seawater. Although cumene degradation occurs in groundwater, the process may be hindered by insufficient nitrogen in the groundwater, thus limiting the types of microbes which could degrade cumene. A typical groundwater supply might also contain a lower dissolved oxygen concentration which will, therefore, inhibit cumene biodegradation (Ref. 65).

Marine environments, which contain low concentrations of available nitrogen, may also hinder cumene biodegradation. Cumene degradation in synthetic seawater containing ammonium nitrate was slightly higher than that measured in ordinary seawater (Ref. 66). Price et al. (Ref. 63) also studied the biodegradation of cumene in seawater. They failed to detect any significant oxygen uptake. It should be noted, however, that the reported solubility of cumene in the synthetic seawater the investigators used was 500 mg/l, which differs from a previously reported value of 42 mg/l (Ref. 18). Whether this difference would affect the biodegradation rate is unclear.

A variety of microorganisms found in soil, freshwater, and marine environments are capable of degrading cumene. These include *Pseudomonas*, *Nocardia*, *Cladosporium*, *Penicillium*, *Aspergillus*, *Candida*, *Sporobolomyces*,



*Aureobasidium*, and *Coryneform* species (Ref. 18).

Degradation pathways were studied by Gibson (Ref. 69) and Jigami et al. (Refs. 70 and 71). Cumene was converted into an orthodihydroxy compound without alteration of the isopropyl side chain. Degradation then proceeded to (+)-2-hydroxy-7-methyl-6-oxo-octanoic acid. Thus it appears that the benzene ring is attacked before the isopropyl side chain is altered.

Marion and Malaney (Ref. 67) showed that activated sludge from 3 different communities was able to biodegrade 50 mg/l cumene as evidenced by oxygen uptake. In another study, activated sludge, which had previously been acclimated to 250 mg/l benzene as the sole carbon and energy source, was used to degrade cumene. The oxygen demand due to cumene biodegradation was 37.8 percent of the theoretical after 192 hours of incubation (Ref. 68).

Activated sludge, acclimated to 500 mg/l aniline as the carbon and energy source, was able to degrade cumene after 30 hours (Ref. 69).

Price et al. (Ref. 63) discovered that 62 percent of the theoretical oxygen demand due to cumene biodegradation occurred by 10 days with unacclimated, settled, domestic wastewater as the inoculum. By 20 days only an additional 8 percent had been used.

The chemical reactions of cumene in water are slow compared to microbial biodegradation. The two most important chemical processes in water are oxidation by alkylperoxy ( $RO_2$ ) and HO radicals (Refs. 72 and 73). The rate constants for the reaction of  $RO_2$  radical and HO radical in pure water systems were determined experimentally to be  $10 M^{-1} s^{-1}$  and  $3 \times 10^9 M^{-1} s^{-1}$ , respectively. These rate constants and the type of products produced from each reaction were used to determine steady-state concentrations for the  $RO_2$  radical and HO radical of  $10^{-12}$  and  $10^{-17}$ , respectively. From these concentrations, the half-life for cumene in water was estimated as 2.2 years from  $RO_2$  radical oxidation, and 0.7 year from HO radical oxidation (Refs. 72, 74, and 75). Because biodegradation probably occurs in less than 1 month, oxidation is not expected to be an important process in water.

The estimated ( $K_{oc}$ ) is 2,800 (Refs. 18 and 64). Generally,  $K_{oc}$  values greater than 1,000 indicate that the compound will be tightly bound to the soil particles (Ref. 76); however, it was shown that microorganisms found in sediment (estuarine) could rapidly degrade cumene (Ref. 77). Therefore, a portion of the cumene adsorbed onto the soil is expected to biodegrade. Nonetheless, since cumene has been detected in

groundwater, this would indicate that detectable concentrations can leach to the groundwater.

EPA's review of the information on the chemical fate of cumene in air and soil indicates that the available data are adequate to characterize the fate of cumene in these media. The data on cumene's fate in water, however, are not sufficient. Data on the biodegradation of cumene in water suggest that biodegradation will occur, but are not adequate to quantitatively determine biodegradation rates in natural waters. In addition, there are no data on the actual volatilization rate of cumene from water. Quantitative estimates or, alternatively, actual monitoring of environmental (aquatic) concentrations, are needed in order to assess the results of the aquatic toxicity tests. Testing is necessary to develop such data.

### III. Findings

EPA is basing the proposed testing requirements for cumene on sections 4(a)(1) (A) and (B) of TSCA.

1. Under section 4(a)(1)(B), EPA finds that cumene is produced in substantial quantities and that there is substantial environmental release with the potential for substantial human exposure from manufacturing, processing, use, and disposal. Approximately 3.5 billion pounds of cumene were produced in the U.S. in 1984. A 900-million pound capacity was on reserve, while an additional 300 million pounds of cumene were imported. More than 98 percent of the cumene manufactured or imported was used in the production of phenol, and to a lesser extent acetone. Cumene may also be used as a solvent or as a precursor in the manufacture of alpha-methylstyrene. Workers potentially exposed to cumene range between 700 to 800. During manufacturing, processing, and use an estimated 3 million pounds of cumene are lost to the atmosphere per year in fugitive emissions. Although this amount is only approximately one fifth the estimated atmospheric release of cumene from land transportation vehicles, the industrial releases are localized and may result in more significant exposures to the general population living near these facilities than the more ubiquitous vehicle emissions. Over half of the cumene manufacturing and processing plants are located in two major metropolitan areas, thus increasing the potential human exposure to 15 to 16 million people. Airborne releases of cumene are not expected to substantially affect aquatic concentrations of the chemical; however, there is evidence of

widespread release of cumene to the environment in industrial effluents.

EPA finds that there are insufficient data to reasonably determine or predict the pharmacokinetic, neurotoxic, developmental, reproductive, mutagenic and oncogenic effects of human exposure to cumene resulting from the manufacturing, processing, use, and disposal of the chemical. Furthermore, EPA finds that there are insufficient data to reasonably determine or predict the biodegradation and volatilization in aquatic systems and the acute and chronic toxicity to saltwater and freshwater fish and invertebrates resulting from the manufacture, processing, use, and disposal of the chemical. EPA finds that testing is necessary to develop such data.

2. Under section 4(a)(1)(A), EPA finds that cumene may present an unreasonable risk of mutagenic and oncogenic effects. TSCA section 8(e) submissions reported positive results in a cell transformation test and in a hepatocyte primary culture/unscheduled DNA synthesis assay. These positive results suggest that cumene may be mutagenic and/or oncogenic. EPA finds that there are insufficient data to reasonably determine or predict the mutagenic and oncogenic effects of cumene and that testing is necessary to develop such data.

### IV. Proposed Rule

#### A. Proposed Testing and Test Standards

The Agency is proposing that health effects, chemical fate, and environmental effects testing be conducted on cumene in accordance with specific guidelines set forth in Title 40 of the Code of Federal Regulations as enumerated below. Test methods under new Parts 796, 797, and 798 were published in the *Federal Register* of September 27, 1985 (50 FR 39252). The health effects tests to be conducted are: (1) pharmacokinetics, comparing oral and inhalation routes of exposure as specified in § 798.7475, (2) inhalation subchronic toxicity as specified in § 798.2450, and as modified in § 799.1285(c)(2)(i)(B); (3) oral subchronic toxicity as specified in § 798.2650 and as modified in § 799.1285(c)(3)(i)(B); (4) neurotoxicity as specified in § 798.6050, § 798.6200, and § 798.6400, and to be conducted in conjunction with the subchronic exposure tests; (5) oncogenicity as specified in § 798.3300 and (6) developmental toxicity as specified in § 798.4350.

The Agency is proposing that both oral and inhalation subchronic tests be conducted on cumene. The inhalation



route will address the concern that the Agency has with occupational exposure to cumene. Data obtained from the oral subchronic test will enable the Agency to assess the potential toxicity of cumene to the general population resulting from groundwater and drinking water exposures.

The inhalation and oral subchronic toxicity tests will serve as (1) an exposure range-finding test for the oncogenicity test, (2) an exposure paradigm for the neurotoxicity tests, and (3) a screen for determining the need for a reproductive toxicity test.

The Agency is proposing that a two-generation reproduction and fertility effects test be conducted if the results of gross or histopathological evaluation of the reproductive tissues in male or female exposed animals from the subchronic exposure tests show adverse effects. Tissues to be evaluated include testes, ovaries, epididymis, vas deferens, prostate, seminal vesicles, vagina, cervix, fallopian tubes, and pituitary. Absolute reproductive tissue/organ weights and reproductive organ-to-body weight ratios shall also be evaluated. An effect is considered adverse if there is a statistically significant ( $p < 0.05$ ) difference in the incidence of lesions or in the mean organ/tissue or weight ratios between any exposed group and a control group of animals. Where one of the above parameters is adversely affected, a two-generation reproductive study shall be conducted using the test method specified in § 799.4700 with inhalation as the route of exposure. EPA is proposing that if no adverse effects are observed in the reproductive tissues from the subchronic exposure test no further reproductive effects testing shall be required at this time.

To assess the potential for cumene to cause gene mutations, the Agency is proposing that mutagenicity testing be conducted on subclones of CHO cells for gene mutations in cells in culture as specified in § 799.5300 and as modified in § 799.1285(c)(9)(i)(A)(2). If the results of cells in culture test are positive a *Drosophila* sex-linked recessive lethal assay (SLRL) shall be conducted using the method specified in § 799.5275 and as modified in § 799.1285(c)(9)(i)(B)(2). A positive result in the SLRL assay will trigger a mouse specific locus test specified in § 799.5200 and as modified in § 799.1285(c)(9)(i)(C)(2). If the cells in culture test is negative no further testing will be required. If the SLRL assay is negative then the mouse specific locus test will not be required.

To assess the potential for cumene to cause chromosomal aberrations, the Agency is proposing that an *in vitro*

cytogenetic assays be conducted on cumene as specified in § 799.5375 and as modified in § 799.1285(c)(8)(i)(A)(2). If the results of the *in vitro* test are positive then a dominant-lethal assay will be required as specified in § 799.5450 and as modified in § 799.1285(c)(8)(i)(C)(2). A positive result in the dominant-lethal assay will trigger a heritable translocation assay specified in § 799.5460 and as modified in § 799.1285(c)(8)(i)(D)(2). If the *in vitro* cytogenetics assay is negative, the *in vivo* bone marrow assay specified in § 799.5385 and as modified in § 799.1285(c)(8)(i)(B)(2) will be required. Should be *in vivo* bone marrow test results prove negative, then no further chromosomal aberrations testing would be required. A positive result in the *in vivo* bone marrow test would trigger the dominant-lethal assay. Again, if the dominant-lethal test is positive a heritable translocation assay shall be conducted.

If the results from the dominant-lethal assay and/or the SLRL are positive, EPA will hold a public program review prior to initiating the heritable translocation and/or mouse specific locus testing. Public participation in this program review will be in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting will be published in the Federal Register. Should the Agency determine, based on the weight of the evidence then available, that proceeding to the heritable translocation test and/or mouse specific locus assay is no longer warranted, the Agency would propose to repeal that test requirement and, after public comment, issue a final amendment to rescind the requirement.

For a more detailed discussion concerning mutagenicity tiered testing and program review see the final test rule for the C9 aromatic hydrocarbon fraction (50 FR 20662).

Acute and chronic toxicity testing is also being proposed for cumene in freshwater and saltwater fish and invertebrates. The aquatic toxicity tests are to be conducted using flow-through aquatic environments, with cumene concentrations at the end of test no less than 80 percent of the initial concentrations. The specific tests to be conducted are (1) *Daphnia magna* acute toxicity test specified in § 797.1300 using *Daphnia magna*, (2) a Mysid shrimp acute toxicity test as specified in § 797.1930 using *Mysidopsis bahia*, (3) fish acute freshwater toxicity tests as specified in § 797.1400 using *Pimephales promelas*, *Salmo gairdneri*, and *Lepomis macrochirus*; (4) The saltwater acute toxicity tests shall be conducted on

*Menidia* and *Cyprinodon variegatus* using the method specified in § 797.1400 and the modification proposed for § 797.1400; the proposed modifications for saltwater testing appear in the proposed rule for octamethylcyclotetrasiloxane, a copy of which is in the docket of this proposed rule for cumene (5) The freshwater and saltwater invertebrate chronic toxicity test shall be conducted using the *Daphnia* chronic toxicity test and Mysid shrimp chronic toxicity test specified in § 797.1330 and § 797.1950, respectively; (6) vertebrate chronic toxicity tests shall be conducted on the most sensitive freshwater and saltwater species (i.e., having the lowest  $LC_{50}$ ) in accordance with the test specified in § 797.1800.

The biodegradation test for cumene shall be conducted using the eco-core method described by Bourquin et al. (Ref. 83). The volatilization test shall be conducted with cumene using the method described by Smith et al. (Ref. 84). The Agency believes that these chemical fate methodologies specify the minimal conditions for acceptable investigation of cumene's chemical behavior in an aquatic system.

The Agency is proposing that the above-referenced health and environmental effects tests be considered the test standards for the purposes of the proposed tests for cumene. The health and environmental effects tests specify generally accepted minimal conditions for characterizing the potential toxicity of cumene. The Agency reviews its standards every year according to the process described in the Federal Register of September 22, 1982 (47 FR 41857).

EPA intends to propose shortly in a separate Federal Register notice certain revisions to these TSCA Test Guidelines to provide more explicit guidance on the necessary minimum elements for each study. In addition, these revisions will avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules. EPA is proposing that these modifications be adopted in the test standards for cumene.

The proposed chemical fate tests specify generally accepted minimal conditions for determining the biodegradation and volatilization rates of cumene from an aquatic system. The Agency believes that these tests reflect current state-of-the-art methods for such testing and are being proposed as acceptable methods for testing the fate of cumene in aquatic systems.

With the exception of the oral subchronic test, the Agency is proposing that inhalation be the initial route of



exposure for the health effects testing of cumene. Inhalation is the route to which the greatest number of people are likely to be exposed to cumene (in light of about 3 million pounds per year in fugitive air emissions). Although administration of cumene by the oral route is more convenient and economical, conducting the test by inhalation would provide a more accurate assessment of the potential toxicity of cumene. Extrapolating toxicity data resulting from an oral study to depict an inhalation exposure, and vice versa, would introduce additional variability into the assessment of cumene's toxicity to human health. Should pharmacokinetic data, or the results of the subchronic toxicity studies, become available which shows that there are no differences in the absorption efficiency of cumene or in the type of metabolites produced between the two routes of exposure, then the Agency would consider changing the proposed inhalation exposure requirement or amending the final rule to the use of an oral route.

Certain modifications and clarifications of the subchronic oral inhalation test standards have been included in the proposed testing for cumene. The modifications include a requirement of histopathological examination of reproductive organs. The Agency believes that if there are certain effects (described in Unit IV. A) seen in the subchronic studies, then there would be cause for concern of possible reproductive effects resulting from exposure to cumene. While a detailed histopathological analysis may not show all potential reproductive effects, it will serve as a minimal indicator of reproductive toxicity. If certain effects are seen in the reproductive tissues, a 2 generation study will automatically be required without promulgating an additional test rule for cumene.

The modifications to the mutagenicity tests include the incorporation of cumene's chemical properties into the test procedures. The Agency believes that these modifications are necessary to ensure that resulting data will be reliable and adequate for assessing the mutagenic potential of cumene.

#### *B. Test Substance*

EPA is proposing that cumene of at least 99 percent purity be used as the test substance. Commercial cumene is generally greater than 99 percent pure.

#### *C. Persons Required to Test*

Section 4(b)(3)(B) of TSCA specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution, use and/or

disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the findings are based on distribution, use, or disposal.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, and use of cumene on human health and the environment, EPA is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process, cumene at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements contained in this proposed rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time after the submission of the last final report required under the test rule equal to that which was required to develop data, if more than 5 years.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

When both manufacturers and processors are subject to a test rule, EPA expects that manufacturers will conduct the testing and that processors will ordinarily be exempted from testing. As described in 40 CFR Part 790, processors will be granted an exemption automatically without filing applications if manufacturers perform all of the required testing. Manufacturers are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for cumene. EPA is interested in evaluating the effects attributable to cumene itself and as

noted in Unit IV.B above, has specified a relatively pure substance for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

#### *D. Reporting Requirements*

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 30 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test standards as follows:

1. The pharmacokinetic test and the neurotoxicity, developmental toxicity, and first-tier mutagenicity studies shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final test rule. The second- and third-tier mutagenicity test shall be completed and final results submitted within 3 to 4 years of the final rule, respectively. Progress reports on all studies will be required quarterly.

2. The subchronic toxicity test shall be completed and final results submitted to the Agency within 12 months of the effective date of the final rule. Progress reports shall be submitted quarterly.

3. The reproductive effects test shall be completed and final results submitted to the Agency within 41 months of the effective date of the final rule if those criteria necessary to trigger reproductive effects testing are met. Progress reports shall be submitted quarterly.

4. The oncogenicity test shall be completed and the final results submitted to the Agency within 53 months of the effective date of the final rule. Progress reports shall be submitted quarterly.

5. The aquatic vertebrate and invertebrate acute toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final test rule. Progress reports shall be required quarterly.

6. The aquatic vertebrate and invertebrate chronic toxicity tests shall be completed and final results submitted to the Agency within 2 years of the effective date of the final rule. Progress reports shall be required quarterly.



7. The biodegradation and volatilization tests shall be completed and final results submitted to the Agency within 1 year of the effective date of the final rule. Progress reports shall be required quarterly.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the *Federal Register* as required by section 4(d) of TSCA.

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707 (45 FR 82844; December 16, 1980). In brief, as of the effective date of the final test rule, an exporter of cumene must report to EPA the first annual export or intended export to cumene to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

#### E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records; (2) submit reports, notices, or other information; or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce" \* \* \*. The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for cumene. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, and that reports accurately reflect the underlying raw data and interpretations and

evaluations, and to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility is also derived from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

#### V. Issues for Comment

This proposed rule specifies TSCA test guidelines and independent, published test methods as the test standards for health, environmental effects and chemical fate testing of

cumene. The Agency is soliciting comments as to whether the OTS health and environmental effects test guidelines and the independent methods are appropriate and applicable for the testing of cumene. Also regarding the testing of cumene, the Agency requests comments on:

1. The adequacy of the proposed testing.
2. The route of administration for the health effects testing. Specifically, should any other test besides the pharmacokinetic and subchronic tests include oral in addition to or instead of the inhalation route of exposure?
3. Should dermal exposure be included in any or all of the health effects testing.
4. The proposed subchronic testing with oral and inhalation routes of exposure.
5. The adequacy of requiring a two-generation reproductive toxicity test if the criteria given in Unit IV.A above are met; or should a two-generation reproductive toxicity test be required immediately without using the subchronic exposure test as a screen.
6. The reporting times for the identified health and environmental effects and chemical fate tests.
7. Whether there are any other testing approaches which should be considered.

#### VI. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs of the maximum set of tests in this proposed rule for cumene are estimated to range from \$1,117,828 to \$1,864,960. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from



\$289,648 to \$483,243. Based on the 1984 production volume of 3.4 billion pounds, the annualized unit test costs range from 0.009 to 0.014 cents per pound. In relation to the current list price of 23 cents per pound for cumene, these costs are equivalent to 0.04 to 0.06 percent of price.

Based on the economic analysis conducted for cumene, the potential for a significant economic impact as a result of the testing required in this proposed rule is low. This conclusion is suggested by the following observations.

(a) Cumene is a major commodity chemical produced in large volumes. Consequently, the test costs on an annualized, unit basis are extremely small.

(b) Cumene is a broadly based chemical intermediate whose cost represents a very small portion of the cost of final products. This situation leads to insensitivity of final demand with respect to cumene price. Demand sensitivity combined with very low unit testing costs makes the potential for economic impact appear insignificant.

For a more detailed discussion of cumene market test costs and potential economic impacts, see the economic analysis (Ref. 82).

#### VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

(PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

#### VIII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, D.C. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-9065); In Washington, D.C.:

(554-1404); outside the U.S.A. (Operator—202-554-1404), by December 23, 1985. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

#### IX. Public Record

EPA has established a record for this rulemaking (docket number OPTS-42075). This record contains the basic information considered by the Agency in developing this proposal and appropriate Federal Register notices. The Agency will supplement the record with additional relevant information as it is received.

This record includes the following information:

##### A. Supporting Documentation

(1) Federal Register notices pertaining to this rule consisting of:

- (a) Notice containing the ITC designation of cumene to the Priority List.
- (b) Rules requiring TSCA section 8 (a) and (d) reporting on cumene.
- (c) Notice containing TSCA test guidelines cited as test standards for this rule.
- (d) Notice containing revision of TSCA test guidelines cited as test standards for this rule.

(2) Communications before proposal consisting of:

- (a) Written public comments and letters.
- (b) Contact reports of telephone conversations.
- (c) Meeting summaries.
- (3) Reports—published and unpublished factual materials.

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Confidential Business Information (CBI), while part of the record, is not available for public review. A public

version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St., SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

## X. Other Regulatory Requirements

### A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least \$100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) There are no known small manufacturers; (2) any small processors are not likely to perform testing or participate in the organization of the testing effort; (3) they will experience only very minor costs in securing exemption from testing requirements; and (4) they are unlikely to be affected by reimbursement requirements.

### C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB number 2070-0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

### List of Subjects in 40 CFR Parts 798 and 799

Testing, Environmental protection, Hazardous substances, Chemicals,

Recordkeeping and reporting requirements.

Dated: October 28, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that Subchapter R of Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

## PART 798—[AMENDED]

1. Part 798 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. New § 798.7475 is added, to read as follows:

### § 798.7475 Oral and inhalation pharmacokinetic test.

(a) *Purpose.* The purpose of these studies is to determine:

(1) Bioavailability of the test substance after oral and inhalation exposure;

(2) Whether or not the biotransformation of the test substance is qualitatively and quantitatively the same after oral and inhalation exposure and;

(3) Whether or not the biotransformation of the test substance is changed qualitatively or quantitatively by repeated dosing.

(b) *Definitions.* Bioavailability refers to the rate and extent to which an administered compound is absorbed, i.e., reaches the systemic circulation.

(c) *Test procedures—(1) Animal selection—(i) Species.* The preferred species is the rat for which extensive data on the toxicity and carcinogenicity of numerous compounds are available.

(ii) *Animals.* Adult male and female Fischer 344 rats are the animals of choice. The rats shall be 7 to 9 weeks old weighing 100 to 145 grams for females and 125 to 175 grams for males. Prior to testing the animals are selected at random for each group. Animals showing signs of ill health are not used.

(iii) *Animal care.* Animals shall be housed in environmentally controlled rooms with 10 to 15 air changes per hour. The rooms shall be maintained at a temperature of 25 ± 2 °C and humidity 50 ± 10 percent with a 12-hour light/dark cycle per day. The rats shall be kept in a quarantine facility for at least 7 days prior to use. The animals shall be acclimated to the experimental environment for a minimum of 48 hours prior to treatment. Certified feed and water are provided *ad libitum*.



(iv) *Numbers*—(A) At least 8 animals (4 males and 4 females) shall be used at each dose level.

(B) Females shall be nulliparous and nonpregnant.

(2) *Administration of test substance*—(i) *Test compounds*. The studies require the use of both nonradioactive test substance and  $^{14}\text{C}$ -labeled test substance. Both preparations are needed to investigate the provisions of paragraph (a)(2) of this section. The use of  $^{14}\text{C}$ -test substance is recommended for the provisions of paragraph (a) (1) and (3) of this section because it would facilitate the work, improve the reliability of quantitative determinations, and increase the probability of observing previously unidentified metabolites.

(ii) *Dosage and treatment*—(A) *Oral studies*. At least two doses shall be used in the study, a "low" and "high" dose. When administered orally, the "high" dose should induce some overt toxicity such as weight loss. The "low" dose shall not induce observable effects attributable to the test substances. Oral dosing shall be performed by gavage using an appropriate vehicle.

(B) *Inhalation studies*. Three concentrations shall be used in the study. Upon exposure, the two higher concentrations should ideally induce some overt symptoms of toxicity, although the intermediate concentration may be excluded from this condition. The lowest concentration shall not induce observable effects attributable to the test substance.

(iii) *Determination of bioavailability*—(A) *Oral studies*. (1) Group A (8 animals, 4 of each sex) shall be dosed once orally with the low dose of  $^{14}\text{C}$ -test substance.

(2) Group B (8 animals, 4 of each sex) shall be dosed once orally with the high dose of  $^{14}\text{C}$ -test substance.

(B) *Inhalation studies*. (1) Group C (4 males and 4 females) is to be exposed (6 hours) to a mixture of nonradioactive test substance in air at the prescribed low hydrocarbon concentration.

(2) Group D (4 males and 4 females) shall be exposed (6 hours) to nonradioactive test substance in air at the intermediate hydrocarbon concentration.

(3) Group E (4 males and 4 females) shall be exposed (6 hours) to nonradioactive test substance in air at the high hydrocarbon concentration.

(4) Group F is identical to paragraph (c)(2)(iii)(B)(2) of this section but using  $^{14}\text{C}$ -labeled test substance.

(5) Group G is identical to paragraph (c)(2)(iii)(B)(2) of this section but using  $^{14}\text{C}$ -labeled test substance.

(6) Group H is identical to paragraph (c)(2)(iii)(B)(3) of this section but using  $^{14}\text{C}$ -labeled test substance.

(C) *Collection of excreta*. After oral administration (Groups A-B) and inhalation exposure (Groups F-H) the rats shall be placed in individual metabolic cages for collection of excreta (urine, feces and expired air) at 8, 24, 48, 72, and 96 hours posttreatment.

(D) *Kinetic studies*. Groups C-E shall be used to determine the kinetics of absorption of the test substance through the lungs. The concentration of the hydrocarbon in inspired and expired air, and blood shall be measured at 0, 3, 6, 12, 24, 48, 72, and 96 hours during and after inhalation exposure. Values for percentage of test substances retention, body burden and saturability shall be calculated from these experiments.

(E) *Repeated dosing study*. Rats (4 animals from each sex) shall receive a series of single daily oral doses of nonradioactive test substance over a period of at least 14 days, followed at 24 hours after the last dose by a single oral dose of  $^{14}\text{C}$ -labeled test substance. Each dose shall be at the low-dose level.

(3) *Observation of animals*—(i) *Bioavailability*—(A) *Blood levels*. The levels of total  $^{14}\text{C}$ -label shall be determined in whole blood and blood plasma or blood serum at 8, 24, 48, 72, and 96 hours after dosing rats in groups A-B and F-H.

(B) *Expired air, urinary and fecal excretion*. The quantities of total  $^{14}\text{C}$ -label excreted in expired air, urine and feces by rat groups A-B and F-H shall be determined at 8, 24, 48, 72 and 96 hours after dosing and, if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing, whichever occurs first.

(C) *Tissue distribution*. Determine the concentration and quantity of  $^{14}\text{C}$ -label in tissues and organs at the time of sacrifice for rat groups A-B and F-H and the repeated-dosing group.

(ii) *Biotransformation after oral and inhalation exposure*. Appropriate qualitative and quantitative methods shall be used to assay urine specimens collected from rat groups A-B and F-H. Suitable enzymatic steps shall be used to distinguish, characterize and quantitate conjugated and nonconjugated test substance metabolites.

(iii) *Change(s) in biotransformation*. Appropriate qualitative and quantitative assay methodologies shall be used to compare the composition of  $^{14}\text{C}$ -labeled components of urine collected at 24 and 48 hours after dosing rate group A with those in the urine collected at similar times in the repeated-dosing study.

(d) *Data and reporting*—(1) *Treatment of results*. Data should be summarized in tabular form.

(2) *Evaluation of results*. All observed results, quantitative or incidental, shall be evaluated by an appropriate statistical method.

(3) *Test report*. In addition to the reporting requirements as specified in the EPA Good Laboratory Practice Standards [Subpart J, Part 792 of this chapter] the following specific information should be reported:

(i) Labeling site of the test substance;

(ii) A full description of the sensitivity and precision of all procedures used to produce the data;

(iii) Percentage retention and saturation concentration for the inhalation studies;

(iv) Quantity of isotope, together with percent recovery of the administered dose in feces, urine, expired air and blood for both routes of administration;

(v) Quantity and distribution of  $^{14}\text{C}$ -test substance in bone, brain, fat, gonada, heart, kidney, liver, lung, muscles, spleen, tissue which displayed pathology and residual carcass;

(vi) Biotransformation pathways and quantities of the test substance and its metabolites in urine collected after oral administration (single low and high doses) and inhalation exposure (low, intermediate and high concentrations);

(vii) Biotransformation pathways and quantities of the test substance and its metabolites in urine collected after repeated administration of the test substance to rats.

(4) *Counting efficiency*. Data should be made available to the Agency upon request.

## PART 799—[AMENDED]

2. Part 799 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603; 2611, 2625.

b. New § 799.1285 is added, to read as follows:

### § 799.1285 Cumene.

(a) *Identification of test substance*. (1) Cumene (CAS No. 98-82-8) shall be tested in accordance with this section.

(2) Cumene of at least 99-percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data*. All persons who manufacture or process cumene other than as an impurity after the effective date of this rule (44 days after the publication date of the final rule in the Federal Register) to the end of the reimbursement period shall



submit letters of intent to conduct testing or exemption applications, submit study plans, conduct tests in accordance with Part 792 of this chapter, and submit data as specified in this section, Subpart A of this part, and Part 790 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1)

*Pharmacokinetics*—(i) *Required testing.* Metabolism studies using the oral and inhalation routes of exposure shall be conducted with cumene in accordance with § 798.7475 of this chapter.

(ii) *Reporting requirements.* (A) The pharmacokinetics testing shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted quarterly beginning 90 days after the effective date of the final rule.

(2) *Inhalation subchronic toxicity*—(i)

*Required testing.* (A) Inhalation subchronic toxicity testing shall be conducted with cumene in accordance with § 798.2450 of this chapter and modifications specified in paragraph (c)(2)(i)(B) of this section.

(B) *Modifications.* The following modifications to § 798.2450 of this chapter for testing cumene are required.

(1) *Animal selection—Numbers.* The requirement under § 798.2450(d)(1)(iv) of this chapter is modified so that at least 30 animals (15 males and 15 females) shall be used for each test group.

(2) *Control groups.* The requirement under § 798.2450(d)(2) of this chapter is modified to require a concurrent control.

(3) *Exposure conditions.* The requirement under § 798.2450(d)(5) of this chapter is modified so that the animals shall be exposed to the test substance 6 hours per day, 5 days per week for 13 weeks (65 days of exposure).

(4) *Observation of animals.* The requirement under § 798.2450(d)(6) of this chapter is modified so that animals shall be weighed weekly, and the requirement under § 798.2450(d)(9) of this chapter is modified so that food and water consumption shall also be measured weekly.

(5) *Gross pathology.* The requirement under § 798.2450(d)(12)(iii) of this chapter is modified so that the following organs and tissues or representative samples thereof shall also be preserved in a suitable medium for histopathological evaluation: vas deferens, vagina, cervix, and fallopian tubes.

(6) *Test report—Individual animal data.* The requirement under § 798.2450(e)(3)(iv)(D) of this chapter is modified to read "Food and water consumption data."

(ii) *Reporting requirements.* (A) The required subchronic toxicity test shall be completed and final results submitted to the Agency within 12 months of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(3) *Oral subchronic toxicity*—(i)

*Required testing.* (A) Oral subchronic tests shall be conducted with cumene in accordance with § 798.2650 of this chapter and as modified in paragraph (c)(3)(B)(i) of this section.

(B) *Modifications.* The following modifications to § 798.2650 of this chapter for testing cumene are required.

(1) *Animal selection—Numbers.* The requirement under § 798.2650(e)(1)(iv)(A) of this chapter is modified so that at least 30 rodents (15 per sex) shall be used at each dose level.

(2) *Control groups.* The requirement under § 798.2650(e)(2) of this chapter is modified to require a concurrent control group.

(3) *Administration of test substance.* The requirement under § 798.2650(e)(7)(i) of this chapter is modified to require that cumene be administered by gavage.

(4) *Observation of animals.* The requirement under § 798.2650(e)(8)(v) of this chapter is modified to require weekly measurements of food and water consumption.

(5) *Gross necropsy.* The requirement under § 798.2650(e)(10)(iii) of this chapter is modified so that the following organs and tissues or representative samples thereof are also preserved in a suitable medium for histopathological evaluation: Vas deferens, vagina, cervix, and fallopian tubes.

(ii) *Reporting requirements.* (A) The required subchronic toxicity test shall be completed and final results submitted to the Agency within 12 months of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(4) *Neurotoxicity*—(1) *Required testing.* Neurotoxicity tests shall be conducted with cumene by inhalation in accordance with §§ 798.6050, 798.6200, and 798.6400 of the chapter.

(ii) *Reporting requirements.* (A) The neurotoxicity tests shall be completed and final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(5) *Reproductive toxicity*—(i) *Required testing.* A reproductive toxicity test shall be conducted with cumene by inhalation in accordance with § 798.4700 of this chapter if the gross or histopathological evaluation of the testes, ovaries, pituitary, epididymus, vas deferens, prostate, seminal vesicles, vagina, cervix, or fallopian tubes, or the absolute reproductive tissue/organ weight, or the reproductive organ-to-body weight ratios from any exposed group of animals from the subchronic inhalation toxicity test conducted in accordance with paragraph (c)(2) of this section or subchronic oral toxicity test conducted in accordance with (c)(3) of this section are significantly different ( $p < 0.05$ ) from control animals.

(ii) *Reporting requirements.* (A) Reproductive toxicity tests shall be completed and final results submitted to the Agency within 41 months of the effective date of the final test rule if those criteria necessary to trigger reproductive effects testing are met.

(B) Progress reports shall be submitted to the Agency on a quarterly basis beginning 21 months after the effective date of the final rule.

(6) *Developmental toxicity*—(i) *Required testing.* Developmental toxicity tests shall be conducted with cumene by inhalation in accordance with § 798.4350 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity test shall be completed and final results submitted to the Agency within 1 year of the effective date of the final test rule.

(B) Progress reports shall be submitted to the Agency on a quarterly basis beginning 90 days after the effective date of the final rule.

(7) *Oncogenicity*—(i) *Required testing.* An oncogenicity test shall be conducted with cumene by inhalation in accordance with § 798.3300 of this chapter.

(ii) *Reporting requirements.* (A) The oncogenicity test shall be completed and final results submitted to the Agency within 53 months of the effective date of the final rule.

(B) Progress reports shall be submitted quarterly beginning 90 days after the effective date of the final rule.

(8) *Mutagenicity—Chromosomal aberrations*—(i) *Required testing.* (A)(1) An *in vitro* cytogenetics test shall be conducted with cumene in accordance with § 798.5375 of this chapter.

(2) *Modifications.* The following modifications to § 798.5375 of this chapter for testing cumene are required.

(i) *Cells—Type of cells used in the assay.* The requirement under



§ 798.5375(d)(3)(i) of the chapter is modified so that cumene shall be tested in Chinese hamster ovary (CHO) cells.

(ii) *Metabolic activation.* The requirement under § 798.5375(d)(4) of this chapter is modified so that the metabolic activation system shall be derived from the postmitochondrial fraction (S9) of livers from rats pretreated with Aroclor 1254.

(iii) *Control groups.* The requirement under § 798.5375(d)(5) of this chapter is modified so that the word "vehicle" is deleted.

(iv) *Test chemicals.* The requirement under § 798.5375(d)(6) of this chapter is modified to read as follows:

Cumene, in varying amounts (for example 1-1000 µl), shall be added directly to the treatment flasks. Multiple concentrations of the test substance over a range adequate to define the response shall be tested. The highest test concentration tested with and without metabolic activation shall be that dose which shows cytotoxicity or reduced mitotic activity.

(v) *Test performance—Treatment with test substance.* The requirement under § 798.5375(e)(2) is modified to read as follows:

Cells in the exponential phase of growth shall be treated with the test substance in the presence and absence of a metabolic activation system. Cells shall be incubated on a rocker panel at 37 °C to insure maximum contact between the cells and the test agent. Flasks shall be closed with a stopper with a rubber septum. Samples shall be removed with a glass-tight syringe at the beginning of the incubation period and analyzed to determine the concentration of cumene in the headspace. For experiments without activation, treatment shall continue for 10 hours (including treatment with spindle inhibitor). For experiments with activation, treatment shall be for 2 hours. At the end of the treatment period, cells shall be washed and refed with culture medium. Incubation shall continue for 8 hours (including treatment with spindle inhibitor). Alternative treatment schedules may be justified by the investigators.

(vi) *Culture harvest time.* The requirement under § 798.5375(e)(5)(i) of this chapter shall be modified to read as follows:

Multiple harvest times shall be used. If cell cycle length is changed by treatment, the fixation intervals shall be changed accordingly.

Additionally, the requirement under § 798.5375(e)(5)(ii) of this chapter shall be deleted.

(vii) *Analysis.* The requirement under § 798.5375(e)(7) of this chapter is modified by deleting the phrase "human lymphocytes."

(B) (1) *An in vivo cytogenetics test* shall be conducted with cumene in accordance with § 798.5385 of this

chapter if cumene produces a negative result in the *in vitro* cytogenetics test conducted pursuant to paragraph (c)(8)(i)(A) of this section.

(2) *Modifications.* The following modifications to § 798.5385 of this chapter for testing cumene are required.

(i) *Animal selection—(A) Species and strain.* The requirement under § 798.5385(d)(3)(i) of this chapter is modified such that mice shall be used in the study.

(B) *Number and sex.* The requirement under § 798.5385(d)(3)(iii) of this chapter is modified so that the sentence "The use of a single sex or different number of animals should be justified" is deleted.

(ii) *Control groups—Concurrent controls.* The requirement under § 798.5385(d)(4)(i) is modified by deleting the word "vehicle."

(iii) *Test chemicals—(A) Vehicle.* The requirement under § 798.5385(d)(5)(i) of this chapter is not applicable to cumene and is, therefore, omitted.

(B) *Dose levels.* The requirement under § 798.5385(d)(5)(ii) of this chapter is modified to read as follows:

Three dose levels shall be used. The highest dose tested shall be the maximum tolerated dose, that dose producing some indication of cytotoxicity (e.g., partial inhibition of mitosis), or the highest dose attainable.

(C) *Route of administration and treatment schedule.* The requirement under § 798.5385(d)(5) (iii) and (iv) of this chapter is modified to read as follows:

Animals shall be exposed by inhalation for 6 hours/day for 5 consecutive days.

(iv) *Test performance.* The requirements under § 798.5385(e) (1), (2), (3), and (4) of this chapter shall be modified to read as follows:

(1) *Treatment.* Animals shall be treated with the test substance for 5 consecutive days at the selected doses.

(2) *Sample collection.* Bone marrow samples shall be taken 6 and 24 hours after the termination of the last treatment.

(3) *Spindle inhibitor and slide preparation.* Prior to sacrifice animals shall be injected I.P. with an appropriate spindle inhibitor (e.g., colchicine or Colcemid \*) to arrest cells in C-metaphase. Immediately after sacrifice, bone marrow shall be obtained, exposed to a hypotonic solution, and fixed. The cells shall then be spread on slides and stained. Chromosome preparations shall be made following standard procedures.

(4) *Analysis.* The number of cells to be analyzed per animal shall be based upon the number of animals used, the negative control frequency, the predetermined sensitivity, and the power chosen for the test slides shall be coded for microscopic analysis.

(C) (1) *A dominant-lethal assay* shall be conducted with cumene in

accordance with § 798.5450 of this chapter if cumene produces a positive result in the *in vitro* or *in vivo* cytogenetics test conducted pursuant to paragraph (c) (8) (i) (A) or (B) of this chapter.

(2) *Modifications.* The following modifications to § 798.5450 of this chapter for testing cumene are required.

(i) *Description.* The requirement under § 798.5450 (d)(2) of this chapter is modified so that cumene shall be administered by inhalation for 5 consecutive days at 6 hours per day.

(ii) *Animal selection—(A) Species.* The requirement under § 798.5450 (d)(3)(i) of this chapter is modified so that mice shall be used in the study.

(B) *Number.* The requirement under § 798.5450 (d)(3)(iii) of this chapter is modified such that the number of males in each group shall be sufficient to provide 30 to 50 pregnant females per mating interval and that each male shall be mated no more than, 2, and preferably to only one, female per mating interval.

(iii) *Control groups—Concurrent controls.* The requirement under § 798.5450 (d)(4)(i) of this chapter is modified such that concurrent positive and negative controls shall be used in each experiment.

(iv) *Test chemical.* The requirement under § 798.5450 (d)(5) of this chapter is modified to read as follows:

Exposure shall be by inhalation for 5 consecutive days at 6 hours per day. Three concentrations shall be used. The highest concentration shall produce signs of toxicity (e.g., slightly reduced fertility) or shall be the highest attainable.

(v) *Test performance.* The requirement under § 798.5450 (e) of this chapter is modified so that during mating, females shall be left with males no longer than 7 consecutive days and that the mating period shall continue for at least 6 weeks.

(D) (1) *A heritable translocation assay* shall be conducted with cumene in accordance with § 798.5460 of this chapter if the results from the dominant-lethal assay conducted pursuant to paragraph (c)(8)(i)(C) of this section are positive for cumene.

(2) *Modifications.* The following modifications to § 798.5460 of this chapter for testing cumene are required.

(i) *Animal selection—Species.* The requirement under § 798.5460 (d)(3) of this chapter is modified so that the mouse shall be the test species.

(ii) *Test chemical—A Vehicle.* The requirement under § 798.5460 (d)(5)(i) of this chapter is omitted.

(B) *Route of administration.* The requirement under § 798.5460 (d)(5)(iii)



of this chapter is modified so that animals shall be exposed by inhalation.

(ii) *Reporting requirements.* (A) Mutagenic effects—chromosomal aberration tests with cumene shall be completed and the final results submitted to the Agency after the effective date of the rule: *In vitro* cytogenetics, 12 months; *in vivo* cytogenetics (bone marrow cytogenetics), 16 months; dominant-lethal assay, 24 months; and heritable translocation assay, 48 months.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(9) *Mutagenic effects—Gene mutation.* (1) *Required testing.* (A) (1) A gene mutation test in mammalian cells shall be conducted with cumene in accordance with § 798.5300 of this chapter.

(2) *Modifications.* The following modifications to § 798.5300 of this chapter for testing cumene are required.

(i) *Reference substances.* The requirement under § 798.5300(c) of this chapter is not applicable to the testing of cumene.

(ii) *Cells—Type of cells used in the assay.* The requirement under § 798.5300(d)(3)(i) of this chapter is modified such that mutation induction at the HPRT locus shall be measured in Chinese hamster ovary (CHO) cells.

(iii) *Metabolic activation.* The requirement under § 798.5300(d)(4) of this chapter is modified such that the metabolic activation system shall be derived from the postmitochondrial fraction (S9) of livers from rats pretreated with Aroclor 1254.

(iv) *Test chemicals—(A) Vehicle.* The requirement under § 798.5300(d)(6)(i) of this chapter is omitted.

(B) *Exposure concentrations.* The requirement under § 798.5300(d)(6)(ii) of this chapter is modified so that cumene, in varying amounts, (for example 1–1000 ul) shall be added directly to the treatment flasks.

(v) *Test performance.* (A) The requirement under § 798.5300(e)(1) of this chapter is modified to read as follows:

Cells should be exposed to the test substance both with and without metabolic activation. Treatment flasks shall be incubated on a rocker panel to insure maximum contact between the cells and the test agent. Incubation shall be at 37 °C for 18 hours for experiments without metabolic activation and for 5 hours for experiments with activation. Each flask shall be closed with a cap with a rubber septum. Headspace samples shall be taken at the beginning and the end of exposure period and analyzed to determine the amount of cumene in each flask.

(B) The requirement under § 798.5300(e)(2) of this chapter shall be modified to include the following:

Cells treated with metabolic activation shall be washed and incubated in culture medium for 21–26 hours prior to subculturing for variability and expression of mutant phenotype. Approximate subculture schedules (generally twice during the expression period) shall be used.

(B)(1) A *Drosophila* sex-linked recessive lethal test shall be conducted with cumene in accordance with § 798.5275 of this chapter if the results from the gene mutation in mammalian cells assay conducted pursuant to paragraph (c)(9)(i)(A) of this section are positive for cumene.

(2) *Modifications.* The following modifications to § 798.5275 of this chapter for testing cumene are required.

(i) *Test chemical—(A) Vehicle.* The requirement under § 798.5275(d)(5)(i) of this chapter is omitted.

(B) *Dose levels.* The requirement under § 798.5275(d)(5)(ii) of this chapter is modified such that a single dose of the test substance is sufficient to test. The use of two additional exposure levels is not required.

(C) *Route of administration.* The requirement under § 798.5275(d)(5)(iii) of this chapter is modified to read as follows:

Route of administration shall be by exposure to cumene vapors.

(C)(1) A mouse specific locus assay shall be conducted with cumene in accordance with § 798.5200 of this chapter if cumene produces a positive result in the sex-linked recessive lethal assay conducted pursuant to paragraph (c)(9)(i)(B) of this section.

(2) *Modifications.* The following modifications to § 798.5200 of this chapter for testing cumene are required.

(i) *Test chemical—(A) Vehicle.* The requirement under § 798.5200(d)(5)(i) of this chapter is omitted.

(B) *Dose levels.* The requirement under § 798.5200(d)(5)(ii) of this chapter is modified to read as follows:

A minimum of 2 dose levels shall be tested. The highest dose tested shall be the maximum dose tolerated without toxic effects, provided that any temporary sterility induced due to elimination of spermatogenesis is of only moderate duration, as determined by a return of males to fertility within 80 days after treatment, or shall be the highest dose attainable.

(C) *Route of administration.* The requirement under § 798.5200(d)(5)(iii) of this chapter is modified to read as follows:

Animals shall be exposed to the test substance by inhalation. Exposure shall be 6 hours per day. Duration of exposure shall be

dependent upon accumulated total dose desired for each group.

(ii) *Test performance—Treatment and mating.* The requirement under § 798.5200(e)(1) of this chapter is modified such that each male shall be mated to a fresh group of 2 to 4 virgin females each week for 7 weeks, after which he shall be returned to the first group of females and rotated through the 7 sets of females for as long as he lives or until the desired number of offspring are obtained.

(i) *Reporting requirements.* (A) *Mutagenic effects.* Gene mutation tests shall be conducted and the final results submitted to the Agency within the specified times after the effective date of the final rule: mammalian cells in culture assay, 12 months; *Drosophila* sex-linked recessive lethal, 24 months; and mouse specific locus, 48 months.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(d) *Environmental effects testing.* (1) *Aquatic acute toxicity.* (i) *Required testing.* Freshwater and saltwater invertebrate and vertebrate tests shall be conducted with cumene concentrations at the end of test no less than 80 percent of the initial concentrations in a flow-through aquatic environment on the following organisms: *Daphnia magna*, to be conducted in accordance with § 797.1300 of this chapter; *Mysidopsis bahia* to be conducted in accordance with § 797.1930 of this chapter; *Pimephales promelas*, *Salmo gairdneri*, *Lepomis macrochirus*, *Menidia* and *Cyprinodon variegatus* to be conducted in accordance with § 797.1400 of this chapter.

(ii) *Reporting requirements.* (A) The acute toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(2) *Aquatic chronic toxicity.* (i) *Required testing.* Aquatic chronic toxicity testing shall be conducted with cumene concentrations at the end of test no less than 80 percent of the initial concentrations in a flow-through aquatic environment on (A) the freshwater vertebrate test species with the lowest LC<sub>50</sub> as determined in accordance with paragraph (d)(1) of this section, and in accordance with § 797.1600 of this chapter, (B) the *Daphnia* in accordance with § 797.1350 of this chapter, (C) the saltwater vertebrate species with the lowest LC<sub>50</sub> as determined in



accordance with paragraph (d)(1) of this section, in accordance with § 797.1600 of this chapter, and (D) mysid in accordance with § 797.1950 of this chapter.

(ii) *Reporting requirements.* (A) Chronic testing shall be completed and final results submitted to the Agency within 2 years of the effective date of the final test rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(e) *Chemical fate testing*—(1)

*Biodegradation*—(i) *Required testing.* Biodegradation testing in water shall be conducted with cumene in accordance with the method described by Bourquin et al., *Developments in Industrial Microbiology* 18: 185-191. 1977. The method is available from the Office of the Federal Register Information Center, 11th and L Streets NW., Washington, DC., and the OPTS Reading Room (docket no. OPTS-42075, Environmental Protection Agency, 401 M Street Washington, DC.). This incorporation by reference was approved by the Director of the Federal Register on [date]. The method is incorporated as it exists on the effective date of this rule; a notice of any change will be published in the *Federal Register*.

(ii) *Reporting requirements.* (A) The biodegradation test shall be completed and final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(2) *Volatilization*—(1) *Required testing.* Volatilization tests shall be conducted with cumene in accordance with the method described by Smith et al., *Env. Sci. and Tech.* 14(11): 1332-1337, 1980. The method is available from the Office of the Federal Register Information Center, 11th and L Streets, Washington, DC., and the OPTS Reading Room (docket number OPTS-42075, Environmental Protection Agency, 401 M Street SW., Washington, DC.). This incorporation by reference was approved by the Director of the Federal Register on [date]. The method is incorporated as it exists on the effective date of this rule; a notice of any change will be published in the *Federal Register*.

(ii) *Reporting requirements.* (A) The volatilization test shall be completed and final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90

days after the effective date of the final rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-0033)

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#### 40 CFR Parts 798 and 799

[OPTS-42073] TSH-FRL 2906-9]

#### 2-Mercaptobenzothiazole; Proposed Test Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing that manufacturers and processors of 2-mercaptobenzothiazole (MBT; CAS No. 149-30-4) be required, under section 4 of the Toxic Substances Control Act (TSCA), to perform testing for persistence and mobility, chronic aquatic toxicity, pharmacokinetics, developmental toxicity, reproductive toxicity, neurotoxicity, and chromosomal aberrations. This proposed rule is in response to the Interagency Testing Committee's (ITC's) designation of MBT for priority consideration for chemical fate and environmental effects testing.

**DATES:** Submit written comments on or before January 6, 1986. If persons request an opportunity to submit oral comment by December 23, 1985, EPA will hold a public meeting on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VIII of this preamble.

**ADDRESS:** Submit written comments, identified by the document control number (OPTS-42073), in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M. St., SW., Washington, D.C. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

**SUPPLEMENTARY INFORMATION:** EPA is issuing a proposed test rule under

section 4(a) of TSCA in response to the ITC's designation of MBT for chemical fate and environmental effects testing consideration.

#### I. Introduction

##### A. ITC Recommendation

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the Interagency Testing Committee (ITC) under section 4(e) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated MBT (CAS No. 149-30-4) for priority consideration in its 15th Report submitted to EPA on November 6, 1984. The report was published in the *Federal Register* of November 29, 1984 (49 FR 46931). The ITC recommended that MBT be considered for chemical fate testing, including dissociation constant, persistence in water and soil, and leaching and migration; and for environmental effects testing, including acute and chronic toxicity to fish, aquatic invertebrates and plants, and terrestrial plants. The bases for these recommendations were as follows: (1) Annual production of 2,328,000 pounds of MBT, 40,000,000 pounds of the sodium salt of MBT (NaMBT) and 4,000,000 pounds of the zinc salt (ZMBT); (2) expected environmental releases from manufacture and processing; (3) available data which demonstrate that MBT and its sodium salt exhibit high acute toxicity to aquatic organisms; and (4) expected widespread terrestrial exposure along roadways. No health effects testing was recommended because of the extensive toxicological testing of MBT already completed and currently underway.

##### B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment.

(i) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities,



and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under sections 4(a)(1)(A)(iii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1)(A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 45 FR 48524 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

In evaluating the ITC's testing recommendations concerning MBT, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration and any public comments on the ITC's recommendations; production volume, use, exposure, and release information reported by manufacturers of MBT under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning MBT; and published and

unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule, EPA is proposing chemical fate and health effects testing requirements for MBT under section 4(a)(1)(B), as well as environmental effects testing of MBT under section 4(a)(1)(A) and (B) of TSCA. By this action, EPA is responding to the ITC's designation of MBT for priority testing consideration.

## II. Review of Available Data

### A. Profile

MBT is a yellow solid with a disagreeable odor, melting at 177-178 °C (Ref. 1). The calculated water solubility is 51 mg/l at pH 5, 118 mg/l at pH 7, and 900 mg/l at pH 9 (Ref. 2). It has a vapor pressure of  $1.9 \times 10^{-5}$  at 25 °C (Ref. 2) and an experimentally derived dislocation constant of 6.93 (Ref. 3). The octanol/water partition coefficient has been estimated to be 1.61 (Ref. 4) and measured to be 2.24 (Ref. 2).

### B. Production

The major manufacturers of MBT are B.F. Goodrich Co., Goodyear Tire and Rubber Co., Monsanto, and Uniroyal Chemical Co. (Ref. 19).

MBT is manufactured by the reaction of aniline with equimolar quantities of sulfur and carbon disulfide at 250 °C and 450 psi in a continuous closed process at high pressure. Purification can be accomplished by dissolving in aqueous base, followed by representation in acid (Refs. 5 and 6).

The 1984 MBT production volumes have been submitted to the Agency as confidential business information (CBI). The 1981 production volume of MBT was reported to be 2,328,000 lbs (Ref. 7). The 1983 sales volume was reported to be 5,958,000 lbs (Ref. 9).

Indirect production of MBT can result during the vulcanization process from the breakdown of MBT-derived accelerators (Ref. 8).

### C. Use

MBT is used mainly as a vulcanization accelerator in rubber manufacture and as an intermediate in the production of other accelerators. Vulcanization involves the formation of sulfur bridges which crosslink rubber polymers. Vulcanization accelerators cause the crosslinking to occur at lower temperatures and shorter curing times than would be otherwise required, resulting in a product with more uniform and predictable properties. MBT is an accelerator with little if any delay in its curing time (Ref. 8). Because of its high activity, MBT has become more of a specialty accelerator for products such

as shoe soles requiring fast curing at low temperature. However, MBT is extensively used as an intermediate to produce other rubber accelerators, some of which decompose during vulcanization to release MBT (Ref. 19).

Secondary uses of MBT includes use as a corrosion inhibitor in cutting oils and petroleum products (Ref. 10), and as a fungicide in clothing for use in the tropics (Ref. 11).

## D. Exposure and Release

1. *Occupational.* The National Occupational Hazard Survey (NOHS) data base (Ref. 12) estimates that as many as 558,893 people in the chemical industry may be exposed to MBT. The National Occupational Exposure Survey (NOES) data base (Ref. 13) estimates that 2,398 workers (of whom 119 are female) are exposed to MBT. The NOHS data base reports actual exposures, exposure to trade name products though to contain MBT, and exposure to products of the type that contain MBT. The NOES data base is limited to workers present where MBT has been identified to be present. Uniroyal has estimated that up to 15 workers may be involved in direct production of MBT for about 20 percent of their work-year (Ref. 14). Worker exposure may be limited by the closed manufacturing system, unpleasant odor, potential for production of allergic dermatitis, and the regulatory need to limit exposure to reactants such as aniline. Besides worker exposure to MBT during production, exposure to MBT is possible during rubber manufacture (Ref. 15), cleaning of manufacture vessels (Ref. 16), drying and grinding (Ref. 10), handling and emptying bags used to transport MBT (Ref. 17), contact with waste waters (Ref. 18), rubber reclaiming, tire recapping, tire burning, and contact with MBT compound containing materials (Ref. 11).

2. *Consumer and general population.* Consumer exposure to MBT could be extensive as a result of its presence in finished rubber goods and the ubiquitous presence of rubber in manufactured consumer items. In the past, allergic dermatitis has been traced to MBT incorporated in clothing articles, i.e., shoes and elastics, and other rubber products contacting human skin (Ref. 19, 54 through 58).

Several products under Food and Drug Administration jurisdiction have been shown to contain residual MBT. This information provides evidence that residual MBT can be present in vulcanized rubber products after processing and leads EPA to conclude that MBT may similarly be present in



vulcanized rubber products under TSCA jurisdiction. MBT has been shown to leach out of several commercial products including the stoppers of 500-ml infusion bottles, single-dose injection syringes, rubber baby bottle nipples, and rubber articles for food contact. The concentrations found in the single-dose injection syringes ranged from 0.7 to 2.0 ppm (Ref. 20). MBT was detected in the aqueous extracts of rubber baby bottle nipples at a mean concentration of 3 ppm, with some samples reaching 30 ppm (Ref. 21). Rubber products in contact with food showed MBT concentrations of 12.3 to 85.6 ppm when run through a series of extractions (Ref. 22).

Human exposure to MBT in ambient air has been estimated from modeling using 2,2'-dithiobis(benzothiazole) (MBTS) and an air dispersion model. EPA estimated air concentrations of MBTS within 1,000 meters of an elastomer manufacturing site to be 0.01 mg/m<sup>3</sup>, equivalent to an inhalation exposure of 0.035 mg/kg body weight/day (620 mg/year). This estimated value probably approximates that for MBT (Ref. 23).

3. *Environmental.* Environmental exposure to MBT results from several sources. The greatest potential for the exposure of nonhuman populations to MBT is to the aquatic environments receiving waste water from plants manufacturing, processing, and using MBT and its derivatives, and to terrestrial populations in areas accumulating a high-density of rubber dust, or in areas receiving waste rubber, i.e., discarded tires (Ref. 19). Using the ENPART environmental partitioning model, the Agency estimated the mass distribution of MBT in the air, water (including sediments), and soil would be 0.0003, 9.9933, and 0.0064, respectively (Ref. 25). The Agency has received CBI release data submitted by the manufacturers of MBT.

MBT (0.03 mg/l) and benzothiazole (0.06 mg/l) have been found in tire-manufacturing waste water effluent (Ref. 18). MBT was also detected in an aerated lagoon at a synthetic rubber plant (Ref. 26) and in the effluent from a waste dump (0.03 mg/l), where MBT was thought to have been disposed (Ref. 27). MBT was found to be the principal contaminant in waste water from the production of MBT derivatives (Ref. 28).

Mean concentrations of MBT in 18 surface water samples were all below the detection limit of 10 ppb (Ref. 29). These water bodies were generally large and in many cases appear to be far removed from potential industrial contamination sources.

Based on information supplied by CMA (Refs. 29 and 32) and the 1983 sales volume of MBT (5,958,000 lbs), EPA estimates that 1,000,000 pounds of MBT are released to the environment annually from the manufacturing, processing, use, and disposal of MBT. It has been estimated that a tire plant producing 25,000 steel belted radial tires per day would release 156 lbs of MBT and 312 lbs of benzothiazole annually (Ref. 18).

CMA prepared a "worst case" aquatic exposure estimate (Ref. 29). The model conclusions were concentrations of 0.545 ppb for rivers with a retention time of 7 days and 0.015 ppb for lakes with a 300-day retention time.

Using the CBI production and release information submitted by the manufacturers of MBT, EPA estimated concentrations of MBT in the air and water near MBT manufacturing sites (Ref. 30). The atmospheric concentration estimates ranged from 15 to 429 parts per trillion and were based on the assumption of 250 operating days per year and an atmospheric half-life for MBT of one day (Ref. 30). Surface water concentrations ranged from 2.96 to 385 ppb and were based on releases over 365 days per year from treatment facilities with no removal of the chemical by adsorption or other processes. Environmental processes including oxidation and photolysis were accounted for; however, it was assumed that MBT does not biodegrade in surface waters (Ref. 30).

Tire wear results in approximately 1.2 billion pounds of rubber dust in the United States each year (Ref. 31). If the initial tire rubber formula contains about 1 percent accelerator as a theoretical maximum, roughly 12 million pounds of vulcanization accelerator products could reach the air and soil adjacent to highways each year (Ref. 1). Since accelerators do degrade during vulcanization, the 12 million pounds would not be entirely MBT but more likely would include degradation products such as benzothiazole. CMA has estimated that 19,200 pounds of MBT could enter the aquatic environment for tire dust. This is based on the estimate that 1.2 billion pounds of tire dust are deposited along U.S. highways each year (Ref. 31) and that 0.0016 percent of the material extracted from rubber dust was MBT (Ref. 32). This estimate appears to be low because the percent of MBT extracted from the rubber was only based on a 7-day study and does not reflect annual release.

#### E. Health Effects

1. *Metabolism.* The Agency has reviewed several metabolism studies

and has found them insufficient to predict the metabolism of MBT. Absorption of MBT from the gastrointestinal tract is indicated by the occurrence of toxic effects in animals and humans that were exposed by the oral route (Ref. 33). The percutaneous absorption of MBT in aqueous solution has also been demonstrated (Ref. 34). Storage of MBT could not be demonstrated in the liver, kidney, or spleen following oral administration; the extent of storage in fat or other tissues was not ascertained (Ref. 35).

Experiments conducted by Nagamatsu et al. (Ref. 34) showed that 6 hours after dosing, 90 percent of radioactive <sup>14</sup>C-MBT was excreted in the urine as the glucuronide and sulfate conjugates of MBT; 7.6 percent of the urine radioactivity represented untransformed MBT.

Colucci has proposed metabolic pathways for MBT in the rat, rabbit, and dog (Ref. 33).

2. *Acute toxicity.* The Agency has reviewed several acute toxicity studies for MBT and has found these studies adequate to predict the acute toxicity. These acute toxicity studies of MBT resulted in oral LD<sub>50</sub> values ranging from 2,000 to 3,000 mg/kg for rats, mice, and guinea pigs (Ref. 36, 37, and 38). Intraperitoneal administration of MBT to rats, mice and guinea pigs resulted in LD<sub>50</sub> values ranging from 200 to 400 mg/kg (Ref. 37 and 38).

It is well established that MBT, particularly as a component in rubber products, is one of the most common human contact allergens (Ref. 54 through 58).

3. *Subchronic toxicity.* The Agency has reviewed several subchronic toxicity studies for MBT and has found these studies adequate to predict the subchronic toxicity of MBT. The subchronic administration of MBT to male mice by daily intraperitoneal injections for 1 week at doses of 100 and 55 mg/kg (corresponding to one-fourth and one-eighth the LD<sub>50</sub>, respectively) revealed extensive liver necrosis in the high-dosage group (Ref. 36). No histopathology was done on the 55 mg/kg dose group. In a related experiment the sleep time in a hexobarbital narcosis study was significantly increased in the high-dosage group, thus indicating functional damage to the liver (Ref. 36).

The results of a subchronic test in which mice and rats were exposed to MBT to determine the maximum tolerated dose for use in a chronic test have been reported to the Agency. MBT was administered by gavage to mice at doses of 94, 188, 375, 750, and 1,500 mg/kg body weight, and to rats at 188, 375,



750, 1,500, and 3,000 mg/kg body weight. Chemical related mortalities occurred at 750 and 1,500 mg/kg for female and male mice and female rats, respectively. Weight gain decrements were found to be dose-level related for both species. Distal convoluted tubular epithelial necrosis of the kidney was identified as a target organ lesion for both sexes of the rat at the 3,000 mg/kg level. The maximum tolerated dose for rats and mice was established at 375 mg/kg body weight (Ref. 39).

4. *Chronic toxicity and oncogenicity.* MBT is the subject of a carcinogenesis study at the National Toxicology Program (NTP). In this study, now in the histopathology phase, rats and mice were exposed to MBT by gavage.

5. *Developmental and reproductive toxicity.* The Agency has reviewed several teratology and reproduction studies and has found them to be inadequate to reasonably predict the developmental and reproductive toxicity of MBT. Several of these studies were designed as screening studies; others were abstracted from Russian literature and details necessary for a thorough review were not available.

The teratogenic potential of intraperitoneally-injected MBT was assessed as part of a NIOSH-sponsored screening study (Ref. 40). Young adult female Sprague-Dawley rats were administered daily injections of 200 mg/kg of MBT in corn-oil on days 1 through 15 of gestation. Examinations conducted on day 21 of gestation showed no evidence of maternal toxicity, fetal toxicity, or teratogenesis. This study is of limited value because it was designed as a screening study and only small group sizes were used.

A more in-depth screening program has been conducted to evaluate the teratogenic potential of MBT. This study included daily subcutaneous injections to three strains of mice on gestation days 6 through 14 for C57 and C3H mice and on gestation days 6 through 15 for AKR mice. The dosages were 464 mg/kg/day (C57, AKR, and C3H mice) and 300 mg/kg/day (C3H mice). All doses were less than the MTD. The mice were sacrificed on the appropriate day of gestation, at which time maternal toxicity and fetotoxicity were assessed. Results of the study show that there was an increased incidence of abnormal fetuses at 464 mg/kg in the C3H and C57 strains. The significance of these findings is unclear, however, because the data are inconsistent and incidences of specific abnormalities were not reported. There was also evidence of fetal and maternal toxicity in the 464 mg/kg C3H mice, increased maternal liver weights in all groups except C3H

mice, and a lack of additional dose levels for evaluation of dose-response relationships (Ref. 41).

In a Russian study MBT and other MBT derivatives were administered to albino rats to evaluate the teratogenic effects. Albino rats dosed with MBT at 20 mg/kg on days 4 and 11 of pregnancy showed a significant increase in embryonic mortality. Criteria for statistical significance and data supporting the decrease in fetal body weight were not reported (Ref. 42).

The teratogenicity of several of the mercaptobenzothiazoles was evaluated in the chicken embryo (Refs. 43 and 44). Technical-grade MBT at a concentration of 0.10 to 2.0  $\mu\text{mol/egg}$  was injected in an acetone vehicle onto the heart of 3-day-old embryos. Two types of eye defects were found frequently in the malformed embryos, as well as defects of the neck and back and open coelom. Incidences of specific malformations were not tabulated in this review.

6. *Mutagenicity.* The genotoxic potential of MBT and several of its derivatives has been evaluated in studies with bacteria, mammalian cells, intact mammals, and *Drosophila*. The review of these studies has led the Agency to conclude that there is adequate information to reasonably predict the gene mutation potential of MBT but inadequate information to predict the potential for MBT to induce chromosomal effects.

MBT has been reported to be nonmutagenic in the Ames *Salmonella typhimurium* reverse mutation assay when tested with strains TA1535, TA1537, TA1538 and/or TA100 (Refs. 45 through 47).

Several other gene mutation studies have been carried out with MBT. MBT does not induce mutations at the HGPRT locus in cultured Chinese Hamster Ovary (CHO) cells or in *Escherichia coli* (Refs. 48 and 49).

More recent studies suggest that MBT is not likely to be mutagenic in a mouse lymphoma assay (Ref. 50). A CMA-sponsored L5178Y mouse lymphoma assay showed a weak positive response (increase in mutant frequency at the TK locus) at MBT dose levels that were highly toxic. These assays were carried out with and without added rat liver S-9 activation. The results of the assay indicate weak mutagenicity of MBT at doses that were highly toxic, i.e., causing relative growth rates of 20 percent or less. However, the elevated mutation frequencies may be attributable to a cytotoxic rather than a genotoxic effect.

The results of a micronucleus test showed that intraperitoneal administration of 300 mg/kg of MBT to

male and female Swiss mice failed to cause an increase in micronucleated polychromatic erythrocytes in the bone marrow (Ref. 51).

The results of a dominant lethal study using albino rats indicate that MBT may induce genetic damage (Ref. 42). MBT was administered by gavage to female rats at a dose of 200 mg/kg on the first and third days of estrus, and to male rats twice at an interval of 3 days (time prior to mating not reported). Results obtained following sacrifice, on the 19th day of pregnancy, indicate mutagenic action. This interpretation is complicated by the unknown interval between male exposure and mating, exposure of the female during estrus, and an lack of a male-only exposure group.

7. *Neurotoxicity.* No data on the neurotoxic effects of MBT have been found in the literature.

#### F. Environmental Effects

Acute toxicity of MBT has been measured using fingerling rainbow trout (*Salmo gairdneri*). A flow-through system with measured concentrations yielded 24, 96, and 192 hour  $\text{LC}_{50}$  values of 1.14, 0.73, and 0.67 mg/l, respectively (Ref. 52). The toxicity of NaMBT using rainbow trout and bluegill sunfish (*Lepomis macrochirus*) was measured using acute static exposures and a 50-percent aqueous NaMBT formulation (Ref. 59). No mortalities were observed beyond 24 hours, leading the authors to conclude that the test material lost its potency after 24 hours. The calculated  $\text{LC}_{50}$  values for MaMBT at 96 hrs were 2.80 mg/l for trout and 13.3 mg/l for bluegills.

Static 96-hour  $\text{LC}_{50}$  values for MBT include 0.75 mg/l for rainbow trout, 1.5 mg/l for bluegills, and 11 mg/l for fathead minnows (*Pimephales promelas*). Comparable  $\text{LC}_{50}$  values for 50-percent NaMBT were 1.8 mg/l and 3.8 mg/l for rainbow trout and bluegills (Ref. 60).

A static acute toxicity assay of MBT and NaMBT with the invertebrate *Daphnia magna* yielded 24-hour and 48-hour  $\text{EC}_{50}$  values of 7.0 mg/l and 4.1 mg/l, respectively. The 24-hour and 48-hour  $\text{EC}_{50}$  values for NaMBT-50 percent were 44 mg/l and 19 mg/l, respectively (Refs. 61 and 62).

Acute toxicity studies of MBT and NaMBT using the alga *Selenastrum capricornutum* have reported 96-hour  $\text{EC}_{50}$  values of 230 mg/l for MBT on chlorophyll and 250 mg/l for MBT on cell count. The  $\text{EC}_{50}$  value for 96-hr chlorophyll using 50 percent NaMBT is 0.4 mg/l and 0.3 mg/l for cell count (Refs. 63 and 64).



MBT, MBTS and N-cyclohexyl-2-benzothiazole sulfenamide (CBS) have been shown to be toxic to the growth of soil microorganisms. The LD<sub>50</sub> value for MBT was given as <0.1 percent, and the LD<sub>50</sub> values for MBTS and CBS were 0.75 percent and 0.25 percent, respectively (Ref. 65). MBT derivatives are known to have bacteriocidal, bacteriostatic and fungicidal effects. The Agency finds that there are adequate data available to predict the acute toxicity to fish, aquatic invertebrates, and plants; however, the chronic toxicity data are inadequate.

#### G. Chemical Fate

MBT can enter the environment during production, processing, and disposal of MBT and rubber products. In general, MBT is nonvolatile and will tend to partition mainly to water rather than to soil and air. MBT has a relatively high water solubility (51 mg/l at pH5, 118 mg/l at pH7 and 900 mg/l at pH9), a low experimentally-derived vapor pressure ( $1.9 \times 10^{-4}$  torr), and a measured log octanol/water partition coefficient of 2.42 (Ref. 2), which indicates that MBT will partition mainly to water. Because of MBT's moderate partition coefficient it is not expected to bioconcentrate significantly. A bioconcentration factor of 25 has been estimated (Ref. 29). Measured adsorption to soil or sediment appears to be only moderate (Ref. 66).

Under environmental conditions, MBT is not susceptible to hydrolysis. High pH is required to hydrolyze MBT. It has been demonstrated that MBT photolyzes in pure water and water containing dissolved humic acids (Ref. 67). However, no environmentally relevant photolysis rate data in aqueous media, and particularly in aquatic humic media, are available on MBT to determine its environmental fate.

Limited evidence of biodegradation is available. MBT is oxidized by mixed cultures and sludge microorganisms (Ref. 69). MBT was found to be degradation-resistant (less than 30 percent of theoretical BOD in 2 weeks) with activated sludge inoculum (Ref. 70). No degradation was seen after 30 days using a COD method, and only 2 percent of maximum CO<sub>2</sub> evolution was found indicating that MBT was essentially undegradable under the conditions of the experiment (Ref. 71). It has been reported that MBT, MBTS, and the MBT derivative N-cyclohexyl-2-benzothiazole sulfenamide (CBS) did not support the growth of soil microbes (Ref. 65).

The Agency has found that there are adequate chemical fate data available to predict the solubility, volatility, octanol/water partition coefficient,

bioconcentration, and hydrolysis of MBT. The Agency has found a lack of data on the aquatic biodegradation and chemical mobility of MBT, and insufficient information to characterize the aqueous photolysis of MBT.

#### III. Findings

##### A. Environmental Effects and Chemical Fate

EPA is basing its proposed environmental effects and chemical fate testing for MBT on the authority of sections 4(a)(1) (A) and (B) of TSCA.

EPA has found that MBT is produced in substantial quantities. This finding takes into account TSCA section 8(a) information that was submitted by the manufacturers of MBT, the indirect production of MBT as a result of the breakdown of MBT-derived accelerators during vulcanization, and the 1983 sales volume of MBT, which was reported by the USITC to be 5,998,000 pounds. EPA also finds that there may be substantial release of MBT to the environment. This finding considers TSCA section 8(a) release data submitted by the manufacturers of MBT, release from processing, release from disposal, release from coolants, and EPA's estimate that 1,000,000 pounds of MBT may be lost to the environment annually through both direct and indirect discharges. MBT release is also expected to occur as a result of the break-down of MBT-derived accelerators in discarded rubber products.

EPA has concluded that the manufacture, processing, use, and disposal of MBT may present an unreasonable risk of injury to organisms in the aquatic environment. EPA is basing this finding on acute toxicity data that are less than 1,000-fold greater than the predicted environmental concentration. The criterion of 1,000x is the uncertainty factor used to relate acute toxicity and predicted environmental concentrations. It is a product of three uncertainty factors: (1) A factor for extrapolating from an insensitive to sensitive species for acute toxicity, (2) a factor for extrapolating from acute to chronic toxicity, and (3) a factor for extrapolating from chronic laboratory toxicity to field or *in situ* toxicity. The existing acute toxicity data show a decrease in LC<sub>50</sub> values over time. These data indicate that chronic effects may present an unreasonable risk at considerably lower concentrations. EPA believes that chronic effects may occur at the predicted environmental concentrations.

EPA has found no data on the chronic effects of MBT on fish and aquatic

invertebrates. EPA has also concluded that the data are inadequate to reasonably predict the persistence and mobility of MBT once it is released into the environment. Therefore, EPA has concluded that available data are inadequate to reasonably determine or predict the chronic effects on fish and aquatic invertebrates from the manufacture, processing, use, and disposal of MBT, nor can the data predict the persistence and mobility of MBT released from such activities. EPA had concluded that testing is necessary to develop such data.

The Agency finds that sufficient data are available in the published literature to satisfy the ITC's recommendation that the dissociation constant be determined. Two experimentally-derived values have been found in the literature and indicate that the dissociation constant is 6.93 (Ref. 29).

After reviewing and evaluating the existing aquatic toxicity data for MBT, EPA has determined that there are sufficient data available to reasonably predict the acute toxicity of MBT to fish, aquatic invertebrates, and plants. MBT has been shown to exert a high acute toxicity in rainbow trout with a 96-hour LC<sub>50</sub> of 0.73 mg/l. *Daphnia magna* has been shown to have a 48-hour LC<sub>50</sub> value of 4.1 mg/l, and *Selenastrum capricornutum* has a 96-hour EC<sub>50</sub> of 230 mg/l. Therefore, EPA is not requiring any additional acute toxicity tests at this time. Should the existing data and the chronic testing proposed in the rule provide results indicating a high priority for control of aquatic concentrations of MBT under the Clean Water Act, EPA may at that time propose additional acute and/or chronic testing to establish water quality criteria pursuant to Section 304(a)(1) of the Clean Water Act.

The Agency has no evidence of substantial exposure of terrestrial plants along the roadside to MBT from tire dust; therefore, the Agency at this time is not proposing any acute or chronic toxicity testing for terrestrial plants.

##### B. Human Health Effects

EPA is basing its proposed health effects testing for MBT on the authority of TSCA section 4(a)(1)(B). EPA finds that MBT is produced in substantial quantities. EPA also finds that there may be substantial human exposure to MBT. The National Occupational Hazard Survey (NOHS) conducted in 1972-1974 estimates that as many as 558,893 people in the chemical industry may be exposed to MBT. The National Occupational Exposure Survey (NOES) data base estimates that 2,398 workers



(of whom 119 are female) are exposed to MBT. A substantial number of consumers also may be exposed to MBT as a result of its presence in finished rubber products.

EPA finds that there is or will be sufficient data available to reasonably determine or predict the acute effects, chronic effects, oncogenic effects, and gene mutation effects of exposure to MBT. EPA finds that there are insufficient data available to reasonably determine or predict the effects of the manufacture, processing, use and disposal of MBT in the areas of metabolism, developmental toxicity, reproductive toxicity, chromosomal aberrations, and neurotoxicity. EPA finds that testing of MBT is necessary to develop such data.

#### IV. Proposed Rule

##### A. Proposed Testing and Test Standards

The Agency is proposing that testing be conducted in accordance with specific test guidelines set forth in Title 40 of the Code of Federal Regulations as enumerated below. Test methods under new Parts 796, 797, and 798 were published in the *Federal Register* of September 27, 1985 (50 FR 39252).

On the basis of the findings presented above for chemical fate testing, the Agency is proposing that MBT be tested for: (1) Biodegradation using the test specified in § 796.3100 of this chapter; (2) indirect photolysis screening using the test specified in § 796.3765 of this chapter, as appears in the proposed rule for phenylene-diamines, a copy of which is in the docket of this rule for MBT; and (3) chemical mobility using the test specified in § 796.2750 of this chapter.

On the basis of the findings presented above for environmental effects testing, the Agency is proposing that chronic toxicity testing of MBT shall be conducted on (1) rainbow trout (*Salmo gairdneri*) using the test specified in § 797.1600 of this chapter; and (2) *Daphnia magna* using the test specified in § 797.1330 of this chapter.

On the basis of the findings presented above for health effects testing, the Agency is proposing that MBT be tested for: (1) Oral and dermal pharmacokinetics using the test specified in § 798.7470 of this chapter; (2) developmental toxicity using the test specified in § 798.4900 of this chapter; (3) reproductive toxicity using the test specified in § 798.4700 of this chapter; and (4) neurotoxicity using the tests specified in §§ 798.6050, 798.6200, and 798.6400 of this chapter.

To assess the potential for MBT to cause chromosomal aberrations, the Agency is proposing that *in vitro*

cytogenetic assays be conducted on MBT as specified in § 798.5375 of this chapter. Unless the results of the *in vitro* test are negative, a dominant-lethal assay will be required using the procedures specified in § 798.5450 of this chapter. A positive result in the dominant-lethal assay will trigger a heritable translocation assay using the procedures specified in § 798.5460 of this chapter. If the *in vitro* cytogenetics assay is negative, an *in vivo* bone marrow assay using procedures specified in § 798.5385 of this chapter will be required. Should the *in vivo* bone marrow test results prove negative, no further chromosomal aberrations testing would be required. A non-negative result in the *in vivo* bone marrow test would trigger the dominant-lethal assay. Again, if the dominant-lethal test is positive a heritable translocation assay shall be conducted. If the dominant-lethal test is negative, no further chromosomal aberrations testing will be required for MBT.

If the results of the dominant-lethal assay are positive, EPA will hold a public program review prior to initiating the heritable translocation assay. Public participation in this program review will be in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting will be published in the *Federal Register*. Should EPA determine, based on the available weight of evidence, that proceeding to the heritable translocation test is no longer warranted, the Agency would propose to repeal that test requirement and, after public comment, issue a final amendment to rescind the requirement.

For a more detailed discussion concerning mutagenicity-tiered testing and public program review procedures see EPA's final test rule for the C9 aromatic hydrocarbon fraction published in the *Federal Register* of May 17, 1985 (50 FR 20682).

The Agency is proposing that the above-referenced TSCA chemical fate, environmental effects, and health effects test guidelines be employed as the test standards for the purposes of the proposed tests for MBT.

The TSCA test guidelines for chemical fate, aquatic toxicity, and health effect testing specify generally accepted minimal conditions for determining the fate, aquatic toxicities, and health effects for substances like MBT to which humans and the environment are expected to be exposed. The Agency's review of the TSCA Test Guidelines, which occurs on a yearly basis according to the process described at 47 FR 41857 (September 22, 1982), has found no reason to conclude that these

protocols need to be modified significantly.

EPA intends to propose shortly in a separate *Federal Register* notice certain revisions to these TSCA Test Guidelines to provide more explicit guidance on the necessary minimum elements for each study. In addition, these revisions will avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules. EPA is proposing that these modifications be adopted in the test standards for MBT.

##### B. Test Substance

EPA is proposing that MBT of at least 98 percent purity be used as the test substance. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to MBT itself. MBT of at least 98 percent purity is commercially available.

##### C. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the findings are based on distribution, use, or disposal.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, use, and disposal of MBT on human health or the environment, EPA is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process, MBT at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements contained in this proposed rule. The end of the reimbursement period for this rule will be 5 years after the last final report is submitted.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf.



Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

When both manufacturers and processors are subject to a test rule, EPA expects that manufacturers will conduct the testing and that processors will ordinarily be exempted from testing. As described in 40 CFR Part 790, processors will be granted an exemption automatically without filing applications if manufacturers perform all of the required testing. Manufacturers are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the test rule.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for MBT. As noted in Unit IV.B above, EPA is interested in evaluating the effects attributable to MBT itself and has specified a highly pure substance for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

#### D. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 30 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed tests as follows:

1. The photolysis, chemical mobility, pharmacokinetics, developmental toxicity, neurotoxicity, and chronic aquatic vertebrate and invertebrate toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final test rule. Quarterly progress reports shall be required.

2. The reproductive toxicity testing shall be completed and the final results submitted to the Agency within 29 months of the effective date of the final test rule. Quarterly progress reports shall be required.

3. The chromosomal aberration tests for MBT shall be completed and the

final results submitted to the Agency after the effective date of the final rule as follows: *in vitro* cytogenetics, 12 months; *in vivo* cytogenetics (bone marrow cytogenetics), 12 months; dominant lethal assay, 24 months; heritable translocation assay, 48 months. There will be a public program review before the heritable translocation test is conducted. Quarterly progress reports are required for all mutagenicity tests.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

Persons who export a chemical substance or mixture subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707 (45 FR 82844; December 16, 1980). In brief, as of the effective date of the final test rule, an exporter of MBT must report to EPA the first annual export or intended export of MBT to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

#### E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records; (2) submit reports, notices, or other information; or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for MBT.

These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations, and to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of the TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.



## V. Issues

This proposed rule identifies various test guidelines as test standards for health and environmental effects testing and chemical fate testing of MBT. The Agency is soliciting comments as to whether these health and environmental effects and chemical fate test guidelines are appropriate and applicable for the testing of MBT. Also regarding the testing of MBT, the Agency requests comments on the adequacy of this testing and the reporting times for the identified health and environmental effects and chemical fate tests.

## VI. Economic Analysis of Proposed Rule

To assess the economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of MBT: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations.

Total testing costs for the proposed rule for MBT are estimated to range from \$246,785 to \$596,630. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from \$63,946 to \$154,856. Based on an estimated 1984 production volume of 47.3 million pounds (Ref. 24), the unit test costs range from 0.001 to 0.003 dollar per pound. Relative to a current list price of \$1.55 per pound for MBT, these costs are equivalent to 0.09 to 0.21 percent of price.

Based on these costs and the market characteristics of MBT, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations:

1. The annual unit cost of the testing required in this rule is very low;
2. Demand for MBT appears relatively inelastic due to its dominant use as an intermediate in the manufacture of the disulfide, salts, and sulfenamides of MBT; and
3. The market expectations of MBT are optimistic.

## VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA

conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), Springfield, VA (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

## VIII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, D.C. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-9065); in Washington, D.C.: (554-1404); Outside the U.S.A.: (Operator—202-554-1404), by December 23, 1985. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

## IX. Public Record

EPA has established a record for this rulemaking, (docket number OPTS-42073). This record contains the basic information considered by the Agency in developing this proposal and appropriate Federal Register notices. The Agency will supplement this record with additional relevant information as it is received.

This record includes the following information:

### A. Supporting Documentation

- (1) Federal Register notices pertaining to this rule consisting of:
  - (a) Notice containing the ITC designation of MBT to the Priority List.

- (b) Rules requiring TSCA section 8(a) and (d) reporting on MBT.

- (c) Notice containing the TSCA test guidelines cited as test standards for this rule.

- (2) Support document consisting of MBT economic analysis.

- (3) Communications before proposal consisting of:

- (a) Written public comments and letters.
- (b) Contact reports of telephone conversations.
- (c) Meeting summaries.
- (4) Reports—published and unpublished factual materials.

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Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

## X. Other Regulatory Requirements

### A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in

section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least \$100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and EPA response to those comments, are included in the rulemaking record.

### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They are not expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

### C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB number 2070-0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments of the information collection requirements.

### List of Subjects in 40 CFR Parts 798 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and recording requirements.

Dated: October 24, 1985.

J. S. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that Subchapter R of Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

## PART 798—[AMENDED]

### 1. Part 798 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. New § 798.7470 is added to read as follows:

### § 798.7470 Oral and dermal pharmacokinetics.

(a) *Purpose.* The purpose of these studies is to:

- (1) Determine the bioavailability of the test substance after dermal or oral administration;
- (2) Ascertain whether the metabolites of the test substance are similar after dermal and oral administration; and
- (3) Examine the effects of a repeated dosing regimen on the metabolism of the test substance.

(b) *Definitions.* (i) Pharmacokinetics is the study of the kinetics of absorption, distribution, metabolism, and excretion of the test chemical in an animal.

(2) Bioavailability refers to the rate and relative amount of administered test chemical which reaches the systemic circulation.

(c) *Test procedures.*—(1) *Animal selection.*—(i) *Species.* The rat shall be used for pharmacokinetics testing because it has been used extensively for absorption, metabolism, and toxicological studies. For dermal penetration studies, the female guinea pig shall also be used to provide additional information on dermal absorption.

(ii) *Animal strains.* Adult male and female Fischer 344 rats and female Hartley guinea pigs shall be used. At 7 to 9 weeks of age, the male rats should weigh 125 to 175 g and the female rats 110 to 150 g. The female guinea pigs, 5 to 7 weeks old, shall weigh between 400 and 500 g. The animals should be purchased from a reputable dealer and shall be identified with ear tags upon arrival. The animals shall be selected at random for the testing groups. Animals showing signs of ill health shall not be used.

(iii) *Animal care.* (A) Animal care and housing should be in accordance with DHEW Publication No. (NIH)-7-23, 1978, "Guidelines for the Care and Use of Laboratory Animals."

(B) The animals should be housed in environmentally controlled rooms with 10 to 15 air changes per hour. The rooms shall be maintained at a temperature of  $25 \pm 2^\circ\text{C}$  and humidity of  $50 \pm 10$  percent with a 12-hour light/dark cycle per day. The rats shall be kept in a quarantine facility for at least 7 days prior to use.

(C) During the acclimatization period, the rats and guinea pigs should be housed in suitable cages on hardwood chip bedding. All animals shall be provided with certified feed and tap



water *ad libitum*. The guinea pig diet shall be supplemented with adequate amounts of ascorbic acid in the drinking water.

(2) *Administration of test substance—*

(i) *Test compound.* These studies require the use of both nonradioactive test substance and radio-labeled test substance.

(ii) *Dosage and treatment—*(A) Two doses shall be used in the study, a "low" dose and a "high" dose. When administered orally, the "high" dose level should ideally induce some overt toxicity, such as weight loss. The "low" dose level should not induce observable effects attributable to the test substance. If feasible, the same "high" and "low" doses shall be administered orally and dermally.

(B) Oral dosing shall be accomplished by gavage or capsule.

(C) For dermal treatment, the doses shall be administered in a suitable vehicle and applied at a volume adequate to deliver the prescribed doses. The backs of the animals should be lightly shaved with an electric clipper 24 hours before treatment. The dose shall be applied with a micropipette on a specific area (2 cm<sup>2</sup> for rats, 5 cm for guinea pigs, or at least 10% of body surface) of the intact shaven skin. The dosed areas shall be occluded with a suitable patch which is secured in place.

(iii) *Washing efficiency study.* Before initiation of the dermal absorption studies described in paragraphs (c)(2)(iv)(A)(2) and (B) of this section, an initial washing efficiency experiment shall be conducted to assess the removal of the applied test compound by washing the exposed skin area with soap and water or organic solvents. Four rats and 4 guinea pigs shall be lightly anesthetized and then the test compound applied at the low dose level to a specific area. After application (5 to 10 minutes), the areas shall be washed with soap and water (2 rats, 2 guinea pigs) or appropriate solvent (2 rats, 2 guinea pigs), then housed in individual cages for excreta collection. Urine and feces shall be collected at least once following dosing. The amount recovered shall be determined to assess efficacy of the test compound removal by washing of the skin.

(iv) *Determination of pharmacokinetics—*(A) *Rat studies.* Each experimental group shall contain at least four animals of each sex for a total of at least eight rats.

(1) *Oral studies.* (i) Group A shall be dosed once orally with the low dose of the test compound.

(ii) Group B shall be dosed once orally with the high dose of the test compound.

(iii) For the oral studies, the animals shall be placed in individual metabolic cages to facilitate collection of urine and feces at 8, 24, 48, 72 and 96 hours following administration. The cages shall be cleaned at each time period to collect any metabolites that might adhere to the metabolic cages.

(2) *Dermal studies.* (i) Group C shall be dosed once dermally with the low dose of the test compound.

(ii) Group D shall be dosed once dermally with the high dose of the test compound.

(iii) For the dermal studies, the test compound shall be kept on the skin for a minimum of 6 hours, or as determined by the adsorption properties of the compound. After application, each animal shall be placed in a separate metabolic cage for excreta collection. Urine and feces shall be collected at 8, 24, 48, 72, and 96 hours. At the time of removal of the patch, the occluded area shall be washed, with an appropriate solvent, to remove any test compound that may be on the skin surface. At the termination of the experiments, each animal shall be sacrificed and the exposed skin area removed. The skin (or an appropriate section) shall be solubilized and assayed for radioactivity to ascertain if the skin acts as a reservoir for the test compound.

(B) *Guinea pig studies.* The studies conducted on groups C and D as specified in paragraph (c)(2)(iv)(A) (2) of this section shall be repeated using female guinea pigs. Each group shall contain at least four female guinea pigs.

(v) *Repeated dosing study.* Group E (four rats, two of each sex) shall receive a series of single daily oral doses of nonradioactive test compound over a period of at least 14 days, followed at 24 hours after the last dose by a single oral dose of radio-labeled test compound. Each dose shall be at the low dose level.

(3) *Observation of animals—*(i) *Bioavailability—*The levels of radioisotope shall be determined in whole blood, blood plasma or blood serum at 8, 24, 48, 72, and 96 hours after dosing rats as specified in paragraphs (c)(2)(iv)(A) and (v) of this section and guinea pigs as specified in paragraph (c)(2)(iv)(B) of this section. Four animals from each group shall be used for this purpose.

(ii) *Urinary and fecal excretion.* The quantities of radioisotope excreted in the urine and feces by rats dosed as specified in paragraphs (c)(2)(iv)(A) and (v) of this section and guinea pigs dosed as specified in paragraph (c)(2)(iv)(B) of this section shall be determined at 8, 24, 48, 72 and 96 hours after dosing, and if necessary, daily thereafter until at least

90 percent of the applied dose has been excreted or until 7 days after dosing (whichever occurs first). Four animals from each group shall be used for these analyses.

(iii) *Biotransformation after oral and dermal dosing.* Appropriate qualitative and quantitative methods shall be used to assay urine and fecal specimens collected from rats dosed as specified in paragraph (c)(2)(iv)(A) of this section. Efforts shall be made to identify any metabolite which comprises 10 percent or more of the dose excreted.

(iv) *Changes in biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of radio-labeled compounds in excreta (collected at 24 and 48 hours after dosing) from rats dosed as specified in paragraph (c)(2)(iv)(A)(1)(i) of this section with those in the excreta (collected at 24 and 48 hours after the radio-labeled dose) from rats in the repeated-dose study as specified in paragraph (c)(2)(v) of this section.

(d) *Data and reporting—*(1) *Treatment of results.* Data shall be summarized in tabular form.

(2) *Evaluation of results.* All observed results, quantitative or incidental, shall be evaluated by an appropriate statistical method.

(3) *Test report.* In addition to the reporting requirements as specified in the EPA Good Laboratory Practice Standards (Subpart J, Part 792 of this chapter) the following specific information shall be reported:

(i) Species and strains of laboratory animals;

(ii) Information on the degree (i.e., specific activity for a radiolabel) and site(s) of labeling of the test substance;

(iii) A full description of the sensitivity and precision of all procedures used to produce the data;

(iv) Percentage absorption of radio-labeled test compound after oral and dermal exposures to rats and fermal exposure to guinea pigs.

(v) Quantity of isotope, together with percent recovery of administered dose in feces, urine, blood and skin and skin washings (dermal study only for last two portions) of rats and guinea pigs.

(vi) Quantity and distribution of radio-labeled test compound in various tissues, including bone, brain, fat, gonads, heart, kidney, liver, lung, muscle, spleen, and in residual carcass, of rats.

(vii) Biotransformation pathways and quantities of test substance and metabolites in excreta collected after administering single high and low oral and dermal doses to rats;



(viii) Biotransformation pathways and quantities of test substance and metabolites in excreta collected after administering repeated low doses of test compound to rats.

#### PART 799—[AMENDED]

2. 40 CFR Part 799 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625

b. New § 799.2475 is added to read as follows:

#### § 799.2475 Mercaptobenzothiazole.

(a) *Identification of test substance.* (1) 2-Mercaptobenzothiazole (CAS No. 149-30-4) [hereinafter "MBT"] shall be tested in accordance with this section.

(2) MBT of at least 98 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (import) or process MBT other than as an impurity after the effective date of this rule (December 19, 1985) to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, submit study plans, conduct tests, and submit data as specified in this section, Subpart A of this Part, and Part 790 for single-phase rulemaking.

(c) *Chemical fate testing.*—(1) *Aerobic aquatic biodegradation.*—(i) *Required testing.* Aerobic aquatic biodegradation tests shall be conducted with MBT in accordance with § 798.3100 of this chapter.

(ii) *Reporting requirements.* (A) The aerobic aquatic biodegradation tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(2) *Indirect photolysis—screening level test.*—(i) *Required testing.* The indirect photolysis test shall be conducted with MBT in accordance with § 798.3765 of this chapter.

(ii) *Reporting requirements.* (A) The indirect photolysis test shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(3) *Chemical mobility.*—(i) *Required testing.* The chemical mobility test shall be conducted with MBT in accordance with § 798.2750 of this chapter.

(ii) *Reporting requirements.* (A) The chemical mobility test shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(d) *Environmental effects testing.*—(1) *Fish chronic toxicity.*—(i) *Required testing.* (A) Chronic toxicity testing of MBT shall be conducted using rainbow trout (*Salmo gairdneri*) in accordance with § 797.1600 of this chapter and modifications specified in paragraph (d)(1)(i)(B) of this section.

(B) Modifications. The following modifications to § 797.1600 of this chapter for testing MBT are required.

(i) *Test substance measurement.* The requirement under § 797.1600(c)(6)(iv) is modified so that test substance concentration is also measured in the test substance delivery chamber prior to beginning, and during, the test.

(2) *pH.* The requirement under § 797.1600(d)(3) is modified so that a pH of 7 is recommended.

(3) *Reporting.* The requirement under § 797.1600(e) is modified to include an analysis of the stability of the stock solution for the duration of the test.

(ii) *Reporting requirements.* (A) The fish chronic toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(2) *Daphnid chronic toxicity.*—(i) *Required testing.* (A) A daphnid chronic toxicity test shall be conducted with MBT using *Daphnia magna* in accordance with § 797.1330 of this chapter and modifications specified in paragraph (d)(2)(i)(B) of this section.

(B) Modifications. The following modifications to § 797.1330 of this chapter for testing MBT are required.

(1) *Test substance measurement.* The requirement under § 797.1330(d)(3)(ii)(B) is modified so that test substance concentration is also measured in the test substance delivery chamber prior to beginning, and during, the test.

(2) *pH.* The requirement under § 797.1330(d)(3) is modified so that a pH of 7 is recommended.

(3) *Reporting.* The requirement under § 797.1330(e) is modified to include an analysis of the stability of the stock solution for the duration of the test.

(ii) *Reporting requirements.* (A) Daphnid chronic toxicity tests shall be completed and the final results

submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(e) *Health effects testing.*—(1) *Pharmacokinetic testing.*—(i) *Required testing.* (A) Oral and dermal pharmacokinetic tests shall be conducted with MBT in accordance with § 798.7470 of this chapter.

(B) Modifications. (1) The requirement under § 798.7470(c)(2)(i) of this chapter for testing MBT is modified so that the compound is labeled with <sup>14</sup>C in the benzothiazole moiety.

(2) The requirement under § 798.7470(c)(2)(ii)(B) of this chapter for testing MBT is modified so that the oral dosing is accomplished by gavage after dissolving the MBT in a suitable vehicle.

(ii) *Reporting requirements.* (A) The pharmacokinetic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress report shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(2) *Developmental toxicity testing.*—(i) *Required testing.* Developmental toxicity tests shall be conducted with MBT in accordance with § 798.4900 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(3) *Reproductive toxicity.*—(i) *Required testing.* Reproductive toxicity tests shall be conducted with MBT in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The reproductive tests shall be completed and the final results submitted to the agency within 29 months of the effective date of this final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(4) *Neurotoxicity.*—(i) *Required testing.* Neurotoxicity tests shall be conducted with MBT in accordance with §§ 798.6050, 798.6200, and 798.6400 of this chapter.

(ii) *Reporting requirements.* (A) The neurotoxicity tests shall be completed and the final results submitted to the



Agency within 1 year of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(5) *Mutagenic effects—Chromosomal aberrations—(i) Required testing—(A) In vitro cytogenetics.* (1) An *in vitro* cytogenetics test shall be conducted with MBT in accordance with § 798.5375 of this chapter and modification specified in paragraph (e)(5)(i)(A)(2) of this section.

(2) Modification. The requirement under § 798.5375 (e)(3) of this chapter for testing MBT is modified so that the metabolic activation system is to be derived from Aroclor-induced rat liver S-9 preparation.

(B) *In vivo cytogenetics.* (1) An *in vivo* cytogenetics test shall be conducted with MBT in accordance with § 798.5385 of this chapter and modifications specified in paragraph (e)(5)(i)(B)(2) of this section if MBT produces a negative result in the *in vitro* cytogenetics test conducted pursuant to paragraph (e)(5)(i)(A) of this section and modification specified in paragraph (e)(5)(i)(A)(2) of this section.

(2) Modifications The following modifications to § 798.5385 of this chapter for testing MBT are required.

(i) The requirement under § 798.5385 (d)(3)(i) is modified so that only mice are used as test animals.

(ii) The requirement under § 798.5385 (d)(5)(iii) is modified so that the route of exposure for MBT is by oral gavage.

(C) A dominant-lethal assay shall be conducted with MBT in accordance with § 798.5450 of this chapter unless MBT produces negative results in both the *in vitro* and *in vivo* cytogenetics tests conducted pursuant to paragraphs (e)(5)(i)(A) and (B) of this section.

(D) A heritable translocation assay shall be conducted with MBT in accordance with the test guideline specified in § 798.5460 of this section if MBT produces a positive result in the dominant assay conducted pursuant to paragraph (e)(5)(i)(C) of this section.

(ii) *Reporting requirements.* (A) Mutagenic effects—chromosomal aberration tests with MBT shall be completed and the final results submitted to the Agency after the effective date of the rule as follows: *in vitro* cytogenetics, 12 months; *in vivo* cytogenetics, 12 months; dominant lethal assay, 24 months; heritable translocation assay, 48 months.

(B) Progress reports shall be submitted quarterly beginning 90 days from the effective date of the rule for all mutagenicity tests.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-0033).

[FR Doc. 85-26206 Filed 11-5-85; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 799

[OPTS-42002C; BH-FRL 2909-4]

#### Fluoroalkenes; Proposed Test Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes a rule to require testing for certain health effects for the fluoroalkenes vinyl fluoride (VF; CAS No. 75-02-5), vinylidene fluoride (VDF; CAS No. 75-38-7), hexafluoropropene (HFP; CAS No. 116-15-4) and tetrafluoroethene (TFE; CAS No. 116-14-3). This proposed testing consists of reproductive effects testing for VDF, subchronic toxicity testing for HFP, chronic oncogenicity bioassays for VF and VDF, tiered mutagenicity testing for VF, VDF, HFP, and TFE and, depending on the outcome of the mutagenicity testing, chronic oncogenicity bioassays for HFP and TFE. Interested persons are invited to comment on this proposal.

**DATE:** Comments must be submitted by January 6, 1986.

**ADDRESS:** Submit written comments, identified by the document control number [OPTS-42002C], in triplicate to: TSCA Public Information Office (TS-783), Office of Pesticides and Toxic Substances, Environmental Protection Agency, room E-108, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, room E-543, 401 M Street SW., Washington, DC 20460. Toll Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

**SUPPLEMENTARY INFORMATION:** EPA is issuing a proposed rule to require health effects testing of vinylidene fluoride, vinyl fluoride, hexafluoropropene, and tetrafluoroethene.

#### I. Introduction

##### A. ITC Recommendation and EPA's Previous Actions

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) under section 4(e) to recommend to the EPA a list of chemicals to be considered

for the promulgation of test rules under section 4(a) of the Act.

The ITC designated the chemical category "fluoroalkenes" for priority testing consideration in its Seventh Report, published in the *Federal Register* of November 25, 1980 (45 FR 78432). The ITC recommended testing for the health effects of oncogenicity, mutagenicity, teratogenicity, reproductive and other toxic effects. The Agency responded to the ITC's designation, as required by section 4(e) of TSCA, by issuing an Advance Notice of Proposed Rulemaking (ANPR) in the *Federal Register* of October 30, 1981 (46 FR 53704). In the ANPR, EPA stated its intention to develop a test rule for vinylidene fluoride (VDF), vinyl fluoride (VF), hexafluoropropene (HFP), trifluoroethene and tetrafluoroethene (TFE) and its decision not to require further testing of 3,3,3-trifluoro-1-propene. In response to the ANPR, the Fluoroalkenes Industry Group (FIG) submitted a proposed testing program for VF, VDF, HFP and TFE and arguments why 3,3,3-trifluoro-1-propene and trifluoroethene should not be made subject to a test rule. Following publication of the ANPR, the Agency also received data under sections 8(a) and 8(d) of TSCA on the fluoroalkenes. In the *Federal Register* of June 4, 1984 (49 FR 23112), EPA solicited public comment on a proposed negotiated testing agreement (NTA) for VF, VDF, TFE and HFP and published its decision not to require testing of trifluoroethene because of very low exposures to that substance. Subsequent legal action (*NRDC v. EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)) found that NTA's such as that proposed for the fluoroalkenes are not a legally adequate alternative to test rules in obtaining needed test data on ITC-designated chemicals. On October 30, 1984 the court ordered EPA to reevaluate the testing needs for the fluoroalkenes and by October 31, 1985 either propose a test rule for the fluoroalkenes or publish the Agency's reasons for not so doing. Therefore, the Agency is now proposing a test rule for vinylidene fluoride (VDF), vinyl fluoride (VF), hexafluoropropene (HFP) and tetrafluoroethene (TFE).

##### B. Test Rule Development Under TSCA

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop appropriate test data if the Administrator finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present



an unreasonable risk of injury to health or the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making section 4(a)(1)(A)(i) findings; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the findings under section 4(a)(1)(A)(i), EPA considers only production, exposure and release. For the findings under sections 4(a)(1)(B)(ii) and 4(a)(1)(B)(iii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the finding under section 4(a)(1)(A)(iii) or 4(a)(1)(B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) findings are discussed in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300) and the section 4(a)(1)(B) findings are discussed in the Federal Register of June 5, 1981 (46 FR 30302).

In evaluating the ITC's testing recommendations concerning the fluoroalkenes, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information

reported by manufacturers of the fluoroalkenes under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 712); health and safety data studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning the fluoroalkenes; and published and unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule, EPA is proposing health effects testing requirements for vinylidene fluoride, vinyl fluoride, hexafluoropropene and tetrafluoroethene under section 4(a)(1)(A).

## II. Review of Available Data

### A. Profile

The ITC (Ref. 1) defined the designated fluoroalkenes to include those compounds having the general chemical formulas  $C_nH_{2n-2}F_x$ , where  $n$  equals 2 or 3 and  $x$  equals 1 to 6. Six fluoroalkenes meeting this category definition were identified from the TSCA Chemical Substances Inventory. Two of the six chemicals, trifluoroethene and 3,3,3-trifluoro-1-propene, were considered by the Agency not to warrant additional testing at this time. The reasons relating to this decision have been discussed in the ANPR and proposed NTA for fluoroalkenes. The remaining four compounds, VF, VDF, TFE and HFP are the subject of this proposed rulemaking. All of these chemicals are gases at room temperature.

### B. Production and Use

Fluoroalkenes in this category are produced and processed in closed systems for economic reasons and, in the case of vinyl fluoride, vinylidene fluoride and tetrafluoroethene, also because of an explosion hazard if the substances are not well contained.

The four fluoroalkenes under consideration for testing are used exclusively as precursors in the manufacture of highly specialized polymers and elastomers. Production levels in 1977 were less than 7 million pounds for VF, 10 million pounds for VDF, 10 to 50 million pounds for TFE and 1 to 10 million pounds for HFP (Refs. 2 through 4 and 9).

### C. Exposure and Release

According to information provided by industry, product loss is minimal (Ref. 5). Actual measurements of exposure to the various chemicals were described in

the ANPR. Subsequent to the ANPR, and as reported in the proposed NTA, the FIG reported on human and area monitoring studies conducted for vinyl fluoride, tetrafluoroethene, hexafluoropropene and vinylidene fluoride in the workplace. All data indicated average human exposure levels are less than 1 part per million (ppm). Area monitoring levels were reported as not exceeding 10 ppm. Individual personal monitors did not exceed a 5 ppm peak level. Estimates of the numbers of workers exposed follow:

WORKER EXPOSURE ESTIMATES

Chemical	Manufacturer	Reference	NIOSH estimate	Reference
Vinyl Fluoride	100	(2)	1,400	(6)
Vinylidene fluoride	460	(3)	1,900	(7)
Tetrafluoroethene	<800	(4)	5,000	(8)
Hexafluoropropene	<800	(5)		

### D. Health Effects

1. *Chronic Effects.* The ITC reported renal damage was found in tests conducted with tetrafluoroethene and hexafluoropropene (Refs. 5, 10 through 12). The ITC report included citations of changes in blood potassium and urinary potassium after inhalation exposure of test animals to HFP, VDF, TFE and VF (Refs. 13 through 15). The ITC believed these changes in potassium levels reflected a metabolic pathway which released fluoride ions in the animals. The ITC postulated that the fluoride ions could bind with potassium, thereby causing the reported renal dysfunction and possibly cardiovascular effects.

A subchronic toxicity study on TFE was submitted by the Society of Plastics Industry, Inc. (Ref. 16) and reported in the Proposed Negotiated Test Program FEDERAL REGISTER Notice. This study was reviewed by Agency scientists and was found to provide a well-defined, no-observed-effect-level of 200 ppm for kidney effects; it was deemed adequate. Another study (Ref. 17) submitted by the FIG, a 14-day subacute study with HFP, demonstrated kidney effects similar to those seen in the TFE study. The results of these two studies tend to confirm the renal effects of this class of compounds. While the 90-day TFE study is valid as a predictor for toxic endpoints, the Agency does not consider the 14-day study on HFP sufficient to predict the long-term no-effect level of HFP on the kidneys.

In preliminary results of a subchronic study sponsored by the Association of Plastics Manufacturers in Europe (APME), and submitted to the Agency by Pennwalt Corporation, VDF-exposed



rats demonstrated a greater than 50 percent decrease in testis weight in the high dose group (40,000 ppm, by inhalation) after 13 weeks of exposure (Ref. 26). Pennwalt notes that these results are contrary to a similar study on VDF in rats and mice performed by the National Toxicology Program (NTP). NTP's study yielded no compound related effects, even at a 50,000 ppm dose level (Ref. 24). Pennwalt stated that it believes non-compound related factors (e.g., stress, diet, disease) may have influenced the results of the APME study, but that additional data are needed to clarify the APME study results.

**2. Carcinogenicity.** The ITC reported on a carcinogenicity study on VDF (Ref. 18). While the study did show malignancies in rats, the test methods were considered questionable by the Agency. However, a second study with VDF (Ref. 19) demonstrated that VDF produced premalignant hepatocellular lesions in rats.

The ITC also reported that in studies with VF, liver toxicity similar to that of vinyl chloride (VC) was seen (Refs. 20 and 21). The ITC further stated that additional analysis of this study revealed that the toxic effects may have been initiated or promoted by other chemicals used in the experiment, PCB and trichloropropane epoxide. However, the ITC did believe that the lesions reported by the study were from the treatment with the vinyl halides and that the toxicity of VF may be mediated through epoxide intermediates. Based on these suggestive findings of the oncogenic potential of VDF and VF, and the structural similarities of these substances to the oncogens vinylidene chloride and vinyl chloride (Ref. 23), EPA believes that both VDF and VF should be tested for oncogenicity. Oncogenicity testing of VDF in the rat, including subchronic toxicity testing, is currently ongoing in Europe under the auspices of the Association of Plastics Manufacturers in Europe. The protocols for this testing (Refs. 24 and 25) were submitted to EPA by the FIG, reviewed and approved as adequate by EPA, and considered as part of the NTA for the fluoroalkenes, as described in the June 4, 1984 Federal Register (49 FR 23112). However, this study does not include oncogenicity testing in a second species, a characteristic generally considered by EPA, NTP and others to be necessary to fully evaluate a chemical's oncogenic potential.

**3. Mutagenicity.** The ITC reported several mutagenicity studies for VF and VDF. Additional information was

reviewed and reported by the Agency in its Proposed Negotiated Test Program (June 4, 1984; 49 FR 23112). These data indicate that in mutagenicity tests with *E. coli* both VF and VDF gave positive mutagenic results. In addition, when VDF was tested in the *Salmonella* reverse mutation assay (Ames) this compound was positive in one test strain both with and without metabolic activation. Neither VF nor HFP gave positive results in the *Salmonella* assay. There are no mutagenicity data on TFE at present.

**4. Metabolism.** A member company of the FIG (ICI Americas) submitted a metabolism study of TFE in rats (Ref. 22). The test indicated that the major metabolic pathway of TFE was through glutathione, not through the cytochrome P450 pathway as in other haloalkene metabolism, notably vinyl chloride. This group also tested the TFE-cysteine conjugate and the HFP-systeine conjugate metabolite in the *Salmonella* assay and reported negative findings for the metabolites. They did not test the parent compounds TFE or HFP in the assay. The report speculated that the metabolites found in the lower carbon fluoroalkenes (i.e. VF and VDF) which do follow the cytochrome P450 metabolic pathway could be more biologically active since they could form epoxides in the cytochrome metabolic pathway.

**5. Developmental Toxicity.** As discussed in the Agency's previous proposed NTA (45 FR 23112), EPA has found no evidence to suggest that VF, VDF, TFE or HFP may cause teratogenicity or other developmentally toxic effects. Industry has submitted a teratogenicity study for VDF which has been reviewed by EPA and found to be adequately performed; it showed no evidence of teratogenic effects.

### III. Findings

EPA is basing its proposed health effects testing of VF, VDF, TFE and HFP on the authority of section 4(a)(1)(A) of TSCA.

EPA finds that the manufacture of these fluoroalkenes may present an unreasonable risk of chronic health effects, oncogenicity or mutagenicity to humans exposed to these substances, based on data presented in Unit II.D. which indicate that VF and VDF may have potential oncogenic effects, that VF, VDF, TFE and HFP may have potential chronic renal effects, that VDF may have potential reproductive effects and that VF, VDF, TFE and HFP may have mutagenic effects.

Available data indicate that VDF may produce oncogenic effects, as evidenced

by positive mutagenicity in *E. coli* and a strain of *Salmonella*, preneoplastic changes observed in the liver cells of rats treated with VDF, and positive oncogenicity results in a study submitted by the FIG. Although this latter study was performed using methodology considered questionable by the Agency, the results are nonetheless considered suggestive of oncogenic potential for VDF. VDF is also structurally similar to vinylidene chloride, which has shown evidence of oncogenicity in some studies.

The Agency also finds that the data available for VF indicate that VF may produce oncogenic effects, based on positive mutagenicity in *E. coli*; liver toxicity similar to that seen for vinyl chloride (a known human oncogen), and the structural similarity of VF to vinyl chloride. Additionally, both TFE and HFP have produced renal function impairment, although without a no-observed effect level being established for HFP. Both VF and VDF induce similar changes in blood and urine chemistry as HFP and TFE when administered to test animals, suggesting the possibility for similar renal toxicity. Newly available data, showing testicular effects in rats exposed to VDF, are suggestive of possible reproductive effects due to VDF exposure. Finally, as reported by the ITC, the fluoroalkenes may metabolize to form reactive epoxides which can result in genotoxicity. Although the TFE and HFP metabolite data do not indicate mutagenic potential in the *Salmonella* test system, this test alone is insufficient evidence of non-mutagenicity of a compound. Therefore the Agency considers that the individual chemicals VF, VDF, TFE and HFP may have genotoxic potential and present a mutagenic risk to humans exposed to these chemicals. Data available on these effects are inconclusive and further testing is needed.

EPA also finds that there is sufficient potential for human exposure to VF, VDF, TFE and HFP, as discussed in Unit II.C., to support section 4(a)(1)(A) findings for these chemicals, although the exposures may not be great enough to make the findings required under section 4(a)(1)(B). The Agency also finds that the available data are insufficient to reasonably predict or determine the effects the manufacture of VF, VDF, TFE and HFP on human health in the areas noted above and, thus, EPA finds that testing is necessary to develop such data.



## IV. proposed rule and test standards

## A. Proposed Testing and Test Standards

The Agency is proposing that health effects testing be conducted on the fluoroalkenes in accordance with specific test guidelines set forth in Title 40 of the Code of Federal Regulations as enumerated below. Test methods under new Parts 796, 797, and 798 were published in the *Federal Register* of September 27, 1985 (50 FR 39252). The Agency is proposing that HFP be tested in the rat and mouse for inhalation subchronic toxicity as specified in § 798.2450 and as modified in § 799.1700(c)(3)(i)(B). Subchronic toxicity testing is not being proposed for TFE because adequate data are currently available as noted in Unit II.D.1., above. Separate subchronic testing is not being required for VF and VDF because it is included as part of the oncogenicity testing being required for those substances. The Agency is proposing that inhalation oncogenicity tests be conducted in rats and mice for VF and VDF. The test guidelines in § 798.3300 are proposed as the test standards for the oncogenicity testing of VF in both species and for VDF in mice. For testing of VDF in rats, EPA proposes that the test protocols submitted earlier by the FIG (Refs. 24 and 25) be adopted as the test standards under this rule. These protocols were reviewed and approved by the Agency as part of the previous proposed NTA. The oncogenicity testing for VF and VDF is an immediate requirement. The Agency believes that the data now available on these two compounds support a section 4(a)(1)(A)(i) finding that the manufacture of these substances may present an unreasonable risk of oncogenicity. There is substantially less evidence at the present time which would indicate that either TFE or HFP may be potential oncogens. The structural similarity among the fluoroalkenes and between the fluoroalkenes and the chloroalkenes provides limited suggestive evidence that there may be potential for TFE and HFP to exert oncogenic effects. However, other data suggest that the metabolism of TFE and HFP may be different from that of VF and VDF. Overall, the Agency believes that the weight of evidence is insufficient to propose oncogenicity testing at this time for TFE and HFP. Therefore, oncogenicity testing for TFE and HFP is being proposed only if triggered by the results of the mutagenicity testing being proposed in this rule. It is proposed that the test guidelines in § 798.3800 be used as the test standards for such testing if it is triggered. Positive test results for TFE or HFP in any of the following tests will

trigger the oncogenicity testing requirement for that chemical: *in vitro* cytogenetics assay, *in vivo* cytogenetics assay, mammalian cells in culture assay and sex-linked recessive lethal assay in *Drosophila melanogaster*.

Based on data recently submitted to the Agency showing significant testicular effects on rats to subchronic exposure of VDF (Ref. 26), the Agency is also proposing a 2-generation reproduction study in rats for VDF, to be conducted according to the test guidelines specified in § 798.4700.

To assess the potential for the fluoroalkenes to cause gene mutations, the Agency is proposing mutagenicity testing in the *Salmonella* reverse mutation assay as specified in § 798.5265 and as modified in § 799.1700(c)(1)(i)(A)(2) for TFE. EPA has adequate data on the other three compounds in this test. EPA is also proposing that mutagenicity testing for cells in culture be conducted for VF and HFP on subclones of CHO cells as specified in § 798.5300 and as modified in § 799.1700(c)(1)(i)(B)(2). The same test must also be performed for TFE should that substance produce negative results in the *Salmonella* assay. If the results of cells in culture test are positive for any individual fluoroalkene or if the results of the *Salmonella* test for TFE are positive, then a *Drosophila* sex-linked recessive lethal (SLRL) assay shall be conducted as specified in § 798.5275 and as modified in § 799.1700(c)(1)(C)(2) for that chemical. Based on positive results from the testing of VDF in the *Salmonella* assay, as discussed in Unit II.D., the Agency is proposing that VDF be tested in the SLRL assay. A positive result in the SLRL for any chemical tested will trigger a mouse specific locus test, specified in § 798.5200 and as modified in § 799.1700(c)(1)(i)(D)(2), in the same chemical. If the cells in culture test is negative then no further gene mutations testing will be required for that fluoroalkene. If the SLRL assay is negative then the mouse specific locus test will not be required.

To assess the potential for fluoroalkenes to cause chromosomal aberrations, the Agency is proposing that *in vitro* cytogenetic assays be conducted on VF, VDF, TFE and HFP as specified in § 798.5375 and as modified in § 799.1700(c)(2)(i)(A)(2). If the results of the *in vitro* test are positive then a dominant lethal assay will be required as specified in § 798.5450 and as modified in § 799.1700(c)(2)(i)(C)(2). A positive result in the dominant lethal assay will trigger a heritable translocation assay as specified in

§ 798.5460 and as modified in § 799.1700(c)(2)(i)(D)(2). If the *in vitro* cytogenetic assay is negative then an *in vivo* cytogenetic assay will be required (as specified in § 798.5385 and as modified in § 799.1700(c)(2)(i)(B)(2)) for that fluoroalkene. Should the *in vivo* cytogenetic results prove negative, then no further chromosomal aberration testing would be required for that substance. A positive result in the *in vivo* cytogenetic assay for any fluoroalkene would trigger the dominant lethal assay for that fluoroalkene. Again, if the dominant lethal assay is positive for any fluoroalkene a heritable translocation assay shall be conducted for that fluoroalkene.

If the results from the dominant lethal assay and/or the SLRL assay are positive, EPA will hold a public program review prior to initiating the heritable translocation and/or mouse specific locus testing. Public participation in this program review will be in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting will be published in the *Federal Register*. Should the Agency determine, based on the weight of the evidence then available, that proceeding to the heritable translocation test and/or mouse specific locus test is no longer warranted, the Agency would propose to repeal that test requirement and, after public comment, issue a final amendment to rescind the requirement.

For a more detailed discussion concerning mutagenicity tiered testing and program review see the final test rule for the C9 aromatic hydrocarbon fraction (50 FR 20662, May 17, 1985).

The Agency is proposing that the above referenced TSCA Health Effects Test Guidelines be considered the test standards for the purposes of the proposed tests for the fluoroalkenes. The specified TSCA guidelines for Health Effects Testing provide generally accepted minimal conditions for ensuring that any required testing will result in reliable and adequate data for evaluating the health effects of VDF, VF, TFE and HFP. The Agency reviews the TSCA test guidelines once a year in accordance with the process described in the *Federal Register* of September 22, 1982 (47 FR 48157). In reviewing the applicability of certain of the mutagenic effects and subchronic test guidelines to the fluoroalkenes, EPA has determined that certain modifications should be made to these guidelines in order to ensure that the resulting data are reliable and adequate.

EPA intends to propose shortly in a separate *Federal Register* notice certain



revisions to these TSCA Test Guidelines to provide more explicit guidance on the necessary minimum elements for each study. In addition, these revisions will avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules. EPA is proposing that these modifications be adopted in the test standards for VF, VDF, HFP, and TFE.

#### B. Test Substance

EPA is proposing testing of VDF, VF, TFE and HFP of at least 99 percent purity. EPA believes that test materials of this purity are available at reasonable cost. EPA has specified relatively pure substances for testing because the Agency is interested in evaluating the effects attributed to the subject compounds themselves. This requirement would increase the likelihood that any toxic effects observed are related to the subject fluoroalkenes and not to any impurities.

#### C. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that there are insufficient data to reasonably determine or predict the effects of the manufacture of the fluoroalkenes on human health, EPA is proposing that persons who manufacture or intend to manufacture VF, VDF, TFE or HFP at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the specific health effects testing requirements for each individual fluoroalkene which they manufacture. Thus, those persons who manufacture or intend to manufacture all four fluoroalkenes will be subject to the entire set of testing requirements set forth in this rule. However, those persons who manufacture or intend to manufacture a subset of those four chemicals will only be responsible for the particular testing requirements for the subset of fluoroalkenes which they manufacture. The end of the reimbursement period will be 5 years after the last final report is submitted or

an amount of time after the submission of the last final report required under the test rule equal to that which was required to develop data, if more than 5 years.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exceptions in 40 CFR Part 790.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for the fluoroalkenes. As noted in Unit IV.B., EPA is interested in evaluating the effects attributable to the fluoroalkenes subject to this rule themselves, and has specified a relatively pure substance for testing.

Manufacturers subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

#### D. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 30 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test standards as follows:

1. The subchronic toxicity test shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final test rule. Progress reports shall be submitted quarterly.
2. The reproductive effects test shall be completed and final results submitted to the Agency within 29 months of the effective date of the final rule. Progress reports shall be submitted quarterly.
3. The mutagenicity studies shall be completed and final results submitted to the Agency within 36 months of the effective date of the final test rule if the

criteria necessary to trigger all of the mutagenicity testing are met. Deadlines for submission of results for individual tests are specified in the rule. Progress reports shall be submitted quarterly.

4. The oncogenicity tests shall be completed and the final results submitted to the Agency within 53 months of the effective date of the final rule for VF and VDF, and within 67 months for HFP and TFE, if required by the mutagenicity testing. Progress reports shall be submitted quarterly.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the *Federal Register* as required by section 4(d) of TSCA.

Persons who export a chemical or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707 (December 16, 1980; 45 FR 82844). In brief, as of the effective date of the final test rule, an exporter of the fluoroalkenes covered by this rule (VF, VDF, HFP and TFE) must report to EPA the first annual export or intended export of a fluoroalkene to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

#### E. Enforcement Provisions

The Agency considers failure to comply with any aspects of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule on order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce \* \* \*". The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures



outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for the fluoroalkenes. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations thereof, and that the TSCA GLP standards and the test standards established in the rule are being complied with.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirements of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it

to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

#### V. Issues for Comment

This proposed rule specifies TSCA test guidelines with certain modifications as the test standards for health testing of fluoroalkenes. The Agency is soliciting comments as to whether these health effects test guidelines and modifications are appropriate for the testing of fluoroalkenes. Also regarding the testing of fluoroalkenes, the Agency requests comments on:

1. The adequacy of this testing.
2. The reporting times for the identified health effects tests.
3. Whether there are any other testing approaches which should be considered.

Two further issues for comment arise from the fact that oncogenicity testing is being proposed for VDF in both rats and mice even though oncogenicity testing (in rats alone) is ongoing in Europe under the auspices of the Association of Plastics Manufacturers in Europe and testing is also planned for VDF in rats and mice by the National Toxicology Program (NTP). NTP is also considering TFE for oncogenicity testing in rats and mice. The Agency believes that both rats and mice should be tested as required by the TSCA Health Effects Guidelines for oncogenicity. The Agency also believes that by proceeding with this rulemaking to require testing now, timely development of the data will be assured, in case the ongoing and planned testing efforts are not brought to completion. The Agency is, however, requesting comment on how best to ensure that this testing is obtained in a timely manner while avoiding duplicative testing.

#### VI. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a

potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs for the proposed rule are estimated to range from \$4,768,900 to \$7,830,100. This estimate includes the costs for both the required minimum series of tests as well as the conditional tests. The annualized test costs (using a cost of capital 25 percent over a period of 15 years) range from \$1,235,600 to \$2,028,800. Based on the estimated production volumes of these four chemicals (between 48 and 77 million lbs), the unit test costs range from \$0.016 to \$0.042 per pound. Relative to the current price range of \$4.30 to \$8.50 per pound for these four chemicals, these unit costs are equivalent to 0.19 to 0.98 percent of price.

Based on these costs and the market characteristics of these four chemicals, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations:

1. The annual unit cost of the testing required in this rule is low.
2. The demand for these four chemicals appears relatively price inelastic due to their exclusive use as precursors in the manufacture of highly specialized polymers and elastomers.

The preceding analysis and conclusions are based on the assumption that the four chemicals in this category will be treated as one for reimbursement purposes, and that the total cost of testing these chemicals will be divided among the producers on the basis of each producer's total production of these chemicals.

The TSCA Reimbursement Rule allows affected private parties to negotiate amongst themselves an equitable cost reimbursement scheme; therefore, while this reimbursement assumption is reasonable, other reimbursement approaches are also possible. The opposite assumption from that used above is one in which each chemical in the category is treated individually; the cost of testing that chemical will be borne only by the manufacturers of that chemical. Under this assumption, the annualized test cost for each chemical is divided by the annual production of that chemical; the increased cost is then compared with the selling price of that chemical. Thus, some chemicals will have higher test costs than others, but given the uses of these four chemicals, and their fairly inelastic demand, it is reasonable to



assume that these chemicals will not be significantly affected.

Refer to the economic analysis available in the public record for this rulemaking for a complete discussion of the test cost estimation and the potential for economic impact resulting from these costs.

#### VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing (PB 82-140773)", can be obtained through the National Technical Information Service (NTIS).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

#### VIII. Public Meeting

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting in Washington, D.C. Persons who wish to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-9065); In Washington, DC: (554-1404); Outside the U.S.A. (operator 202-554-1401), by December 23, 1985. The meeting will not be held if members of the public do not indicate that they wish to make oral presentations. This meeting will be scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether the meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will

become part of EPA's record for this rulemaking.

#### IX. Rulemaking Record

EPA has established a record for this rulemaking (OPTS-42002). This record includes basic information considered by the Agency in developing this proposal and appropriate Federal Register notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

##### A. Support Documentation

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of fluoroalkenes to the Priority List (45 FR 78432).

(b) Notice of the Agency's initial response to the ITC on fluoroalkenes (46 FR 53704).

(c) Notice of the Agency's second response to the ITC on fluoroalkenes (49 FR 23112).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652).

(e) Notice of final rulemaking on data reimbursement (48 FR 31786).

##### B. References

(1) Seventh Report of the Interagency Testing Committee to the Administrator, Nov. 25, 1980; 45 FR 78432.

(2) Fluoroalkene Industry Group. Unpublished Report on Potential Exposure to Vinyl Fluoride During Manufacture of Monomer Vinyl Fluoride. Submitted to USEPA June 26, 1981.

(3) Fluoroalkene Industry Group. Unpublished Report on Vinylidene Fluoride (VDF) Exposure. Submitted to USEPA June 26, 1981.

(4) Halocarbon Products Corporation. Letter from L. Fersting to A. Keller, June 25, 1982.

(5) Fluoroalkene Industry Group. Unpublished report on potential exposure to tetrafluoroethene during manufacture of monomer tetrafluoroethene. Submitted to USEPA August 13, 1981.

(6) NIOSH (National Institute for Occupational Safety and Health). Vinyl Fluoride Industrial Hygiene Survey Report. October 1977.

(7) NIOSH-OSHA (National Institute for Occupational Safety and Health/ Occupational Safety and Health Administration). Current Intelligence Bulletin 28. Vinyl Halides Carcinogenicity. September 21, 1978. DHEW (NIOSH) Publication No. 79-102.

(8) NIOSH. SIC/NIOSH Survey. Computer printout of surveys covering 1972-74. Retrieved by USEPA 1980.

(9) TSCA Chemical Substances Inventory (EPA 1977).

(10) Fluoroalkenes; Response to the interagency Testing Committee, Oct. 30, 1981; 46 FR 53704.

(11) Clayton, J.W. "The Toxicity of fluorocarbons with special reference to chemical constitution." *Journal of Occupational Medicine* 4:262-272, 1962.

(12) Clayton, J.W. "Fluorocarbon toxicity and biological action." *Fluorine Chemistry Review* 1:197-252, 1967.

(13) Clayton, J.W. "Fluorocarbon toxicity and biological action." In Fink, B.R. ed. "Toxicity of Anaesthetics." The Williams and Wilkins Co., Baltimore pp. 77-104, 1968.

(14) Clayton, J.W. "Toxicology of the Fluoroalkenes: Review and Research Needs." *Environmental Health Perspectives* 21:255-267, 1977.

(15) Dilley, J.V., L.C. Vernon, and E.S. Harris. "Fluoride ion excretion by male rats after inhalation of one of several fluoroethylenes or hexafluoropropene." *Toxicology and Applied Pharmacology* 27:582-590, 1974.

(16) The Society of Plastics Industry, Inc. "Ninety-day inhalation toxicity study with tetrafluoroethylene (TFE) in rats and hamsters." Haskell Laboratory Report No. 208-82, July 7, 1982.

(17) Society of the Plastics Industry, Inc. "Subchronic inhalation toxicity of hexafluoropropylene." Study submitted by E.I. du Pont de Nemours and Company under section 8(d) of TSCA, February 20, 1985. Ref. 878215099.

(18) Maltoni, D. and D. Tovoli. "First experimental evidence of the carcinogenic effects of vinylidene fluoride." *La Medicina del Lavoro* 70:363-368, 1979.

(19) Stockle, G.R., J. Laib, J.G. Fisher, and H.M. Bolt. "Vinylidene Fluoride Metabolism and induction of preneoplastic hepatic foci in relation to vinyl chloride." *Toxicology Letters* 3:337-342, 1979.

(20) Conolly, R.B., and R.J. Jaeger. "Acute hepatotoxicity of ethylene and halogenated ethylenes after PCB pretreatment." *Environmental Health Perspectives* 21:131-135, 1977.

(21) Conolly, R.B., R.J. Jaeger and S. Szabo. "Acute hepatotoxicity of ethylene, vinyl fluoride, vinyl chloride and vinyl bromide after Arochlor 1254 pretreatment." *Experimental Molecular Pathology* 28:25-33, 1978.

(22) Lyons, James. Letter with study addressed to Richard Troast, TRDB, ECAD, 1985.

(23) International Agency for Research on Cancer. *IARC monographs on the evaluation of the carcinogenic risk of chemicals to humans, Supplement 4:260-264, 1982.*

(24) CIVO Institutes TNO. Protocol for a sub-chronic (13-week) inhalation study of vinylidene fluoride vapour in rats. Submitted to USEPA August 1, 1984.

(25) CIVO Institutes TNO. Protocol for a chronic toxicity/carcinogenicity inhalation study of vinylidene fluoride vapour in rats. Submitted to USEPA August 1, 1984.

(26) Hopkins, John E. Letter with preliminary study results addressed to Dr. John Moore, OPTS, USEPA, 1985.



## X. Other Regulatory Requirements

### A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the total cost of all the proposed testing for fluoroalkenes is \$4,768,900 to \$7,830,100 over the testing and reimbursement period. Second, the cost of the testing is not likely to result in a major increase in users' costs or prices. Finally, based on our present analysis, EPA does not believe that there will be any significant adverse effects as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They are not expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

### C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0033. Comments on these requirements should be submitted to the Office of Information and Regulation Affairs of OMB marked, "Attention: Desk Officer for EPA". The final rule package will respond to any OMB or public comments on the information collection requirements.

### List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: 31 October 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

## PART 799—[AMENDED]

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.1700 is added, to read as follows:

### § 799.1700 Fluoroalkenes.

(a) Identification of test substances.

(1) Vinyl fluoride (VF; CAS No. 75-02-5), vinylidene fluoride (VDF; CAS No. 75-38-7), tetrafluoroethene (TFE; CAS No. 116-14-3) and hexafluoropropene (HFP; CAS No. 116-15-4) shall be tested in accordance with this section.

(2) VF, VDF, TFE and HFP of at least 99 percent purity shall be used as the test substances.

(b) Persons required to submit study plans, conduct tests and submit data.

All persons who manufacture VF, VDF, TFE or HFP from the effective date of this section (44 days from the publication date of the final rule in the *Federal Register*) to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, submit study plans, conduct tests and submit data as specified in this section. Subpart A of this Part, and Part 790 of this chapter for single-phase rulemaking, for the substances they manufacture.

(c) Health effects testing—(1) Mutagenic effects—Gene mutation—(i) Required testing. (A) (1) Gene mutation assays in the *Salmonella typhimurium*-histidine reversion system shall be conducted with TFE in accordance with § 798.5265 of this chapter.

(2) Modifications to § 798.5265 of this chapter. The following modifications to § 798.5265 of this chapter for testing TFE are required.

(i) Reference substances. The requirement under § 798.5265(c) of this chapter regarding reference substances is not applicable for TFE.

(ii) Test Method—Description. The requirement under § 798.5265(d)(2) of this chapter is modified for TFE so that the dessicator method shall be used for this study.

(iii) Control groups. The requirement under § 798.5265(d)(5)(i) of this chapter is modified for TFE so that concurrent positive and negative (untreated and filtered air) controls shall be included in each experiment. In experiments with

metabolic activation, the positive control shall be known to require such activation. Methyl bromide is an example of a positive control for experiments without activation and vinyl chloride is an example of a positive control for experiments with metabolic activation. Filtered air shall serve as the negative control.

(iv) Test performance. The requirement under § 798.5265(e) of this chapter is modified for TFE so that for tests without metabolic activation, 0.5 ml of phosphate-buffered-saline (PBS) and 0.1 ml of bacteria shall be added to 2.0 ml of overlay agar. For tests with metabolic activation, 0.5 ml of activation mixture containing an adequate amount of post-mitochondrial fraction shall be added to the agar in place of the PBS and after the addition of the bacteria. Contents of each tube shall be mixed and poured over the surface of a selective agar plate. The overlay agar shall be allowed to solidify and plates without lids shall be placed in glass chambers. Test gas mixed with filtered air at several concentrations shall be introduced into the chambers through a flow-meter system. Gas-air mixture shall flow through the chambers for five volume changes after which the chambers shall be closed and placed in an incubator at 37 °C for 48 hours. At the end of the exposure period, chambers shall be flushed with five volumes of air. After chambers have been flushed with air, plates shall be removed and revertant colonies counted. Concentrations of test gas in the chambers shall be determined 2 to 3 hours after initiating treatment and just prior to the termination of exposure. All plating shall be done at least in triplicate. All results shall be confirmed in an independent experiment.

(v) Test report. The requirement under § 798.5265(f)(5)(iii) of this chapter is modified for TFE so that test gas concentration in the chambers at each sampling period and the rationale for selection of each concentration shall be reported.

(B) (1) a specific locus mutation assay in mammalian cells in culture shall be conducted with VF and HFP in accordance with § 798.5300 of this chapter. TFE shall also be tested in this assay in accordance with § 798.5300 of this chapter if the *Salmonella* assay conducted on TFE pursuant to paragraph (c)(1)(i)(A) of this section produces a negative result.

(2) Modification of § 798.5300 of this chapter. The following modification to § 798.5300 of this chapter for testing VF, TFE and HFP are required.



(i) *Reference substances.* The requirement under § 798.5300(c) of this chapter regarding reference substances is not applicable to VF, TFE and HFP.

(ii) *Test method—Type of cells used in the assay.* The requirement under § 798.5300(d)(3)(i) of this chapter is modified for VF, TFE and HFP so that mutation induction at the HPRT locus shall be measured in Chinese hamster ovary (CHO) cells. Cells shall be checked for *Mycoplasma* contamination and may also be checked for karyotype stability.

(iii) *Test Method—Metabolic activation.* The requirement under § 798.5300(d)(4) of this chapter is modified for VF, TFE and HFP so that cells shall be exposed to test substance both in the presence and absence of a metabolic activation system. The metabolic activation system shall be derived from the post-mitochondrial fraction (S-9) of livers from rats pretreated with Aroclor 1254.

(iv) *Test method—Control groups.* The requirement under § 798.5300(d)(5) of this chapter is modified for VF, TFE and HFP so that positive and negative controls shall be included in each experiment. In assays with metabolic activation, the positive control substance shall be known to require such activation. Filtered air shall serve as the negative control.

(v) *Test method—Test chemicals.* The requirement under § 798.5300(d)(6) of this chapter is modified for VF, TFE and HFP so that the test should be designed to have a predetermined sensitivity and power. The number of cells, cultures, and concentrations of test substance used should reflect these defined parameters. The number of cells per culture is based on the expected background mutant frequency; a general guide is to use a number which is ten times the inverse of this frequency. Several concentrations (usually at least 4) of the test substance shall be used. These shall yield a concentration-related toxic effect. The highest concentration shall produce a low level of survival (approximately 10 percent) and the survival in the lowest concentration shall approximate that of the negative control. Cytotoxicity shall be determined after treatment with the test substance both in the presence and in the absence of the metabolic activation system.

(vi) *Test performance.* The requirement under § 798.5300(e)(1) of this chapter is modified for VF, TFE and HFP so that cells in treatment medium with and without metabolic activation shall be exposed to varying concentrations of test gas-air mixtures by flushing treatment flasks with 10

volumes of test gas-air mixture at a rate of 500 mL/min or that rate which will allow complete flushing within one minute. Each flask shall be closed with a cap with a rubber septum. Headspace samples shall be taken at the beginning and end of the exposure period and analyzed to determine the amount of test gas in each flask. Flasks shall be incubated on a rocker panel at 37 °C for 18 hours for experiments without metabolic activation and 5 hours for experiments with metabolic activation.

(vii) *Test performance.* The requirement under § 798.5300(e)(2) of this chapter is modified for VF, TFE and HFP so that at the end of the exposure period, cells treated without activation shall be washed and subcultured immediately to determine viability and to allow for expression of mutant phenotype. Cells treated with metabolic activation shall be washed and incubated in culture medium for 21 to 26 hours prior to subculturing for viability and expression of mutant phenotype. Appropriate subculture schedules (generally twice during the expression period) shall be used.

(viii) *Test performance.* The requirement under § 798.5300(e)(3) of this chapter is modified for VF, TFE and HFP so that at the end of the expression period, which shall be sufficient to allow near optimal phenotypic expression of induced mutants (generally 7 days for this cell system), cells shall be grown in medium with and without selective agent for determination of numbers of mutants and cloning efficiency respectively. This last growth period is generally 7 days at 37 °C.

(C)(1) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with VDF in accordance with § 798.5275 of this chapter. This test shall also be conducted with TFE in accordance with § 798.5275 of this chapter if the *Salmonella* assay conducted on TFE pursuant to paragraph (c)(1)(i)(A) of this section produces a positive result. This test shall also be performed with VF, HFP and TFE for whichever of these substances produces a positive result in the specific locus mutation assay conducted pursuant to paragraph (c)(1)(i)(B) of this section.

(2) Modifications to § 798.5275 of this chapter. The following modifications to § 798.5275 of this chapter for testing VDF, VF, TFE and HFP are required.

(i) *Test chemicals—Vehicle.* The requirement under § 798.5275(d)(5)(i) of this chapter regarding vehicle is omitted for VDF, VF, TFE and HFP.

(ii) *Test chemicals—Dose levels.* The requirement under § 798.5275(d)(5)(ii) of this chapter is modified for VDF, VF,

TFE and HFP so that it is sufficient to test a single dose of the test substance. This dose shall be the maximum tolerated dose or that which produces some indication of toxicity.

(iii) *Test chemicals—Route of administration.* The requirement under § 798.5275(d)(5)(iii) of this chapter is modified for VDF, VF, TFE and HFP so that exposure shall be by inhalation.

(D)(1) A mouse specific locus assay shall be conducted with VF, VDF, TFE and HFP in accordance with § 798.5200 of this chapter for whichever of these substances produces a positive result in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(1)(i)(C) of this section.

(2) Modifications to § 798.5200 of this chapter. The following modifications to § 798.5200 of this chapter for testing VF, VDF, HFP and TFE are required.

(i) *Test chemicals—Vehicle.* The requirement under § 798.5200(d)(5)(i) of this chapter regarding vehicle is omitted for VF, VDF, HFP and TFE.

(ii) *Test chemicals—Dose levels.* The requirement under § 798.5200(d)(5)(ii) of this chapter is modified for VF, VDF, HFP and TFE so that a minimum of two dose levels shall be tested. The highest dose tested shall be the highest dose tolerated without toxic effects, provided that any temporary sterility induced due to elimination of spermatogonia is of only moderate duration, as determined by a return of males to fertility within 80 days after treatment, or shall be the highest dose attainable.

(iii) *Test chemicals—Route of administration.* The requirement under § 798.5200(d)(5)(iii) of this chapter is modified for VF, VDF, HFP and TFE so that animals shall be exposed to the test substance by inhalation. Exposure shall be for 6 hours a day. Duration of exposure shall be dependent upon accumulated total dose desired for each group.

(ii) *Reporting requirements.* (A) Mutagenic effects gene mutation tests shall be conducted and the final results submitted to the Agency after the effective date of the rule as follows: gene mutation in *Salmonella*, 4 months; specific locus mutagenicity assay, 9 months; *Drosophila* sex-linked recessive lethal, 24 months; mouse specific locus, 36 months.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(2) *Mutagenic effects—Chromosomal aberrations—(i) Required testing.* (A)(1) An *in vitro* cytogenetics test shall be conducted with VF, VDF, TFE and HFP



in accordance with § 798.5375 of this chapter.

(2) Modifications to § 798.5375 of this chapter. The following modifications to § 798.5375 of this chapter for testing VF, VDF, TFE and HFP are required.

(i) *Test method—Type of cells used in the assay.* The requirement under § 798.5375(d)(3)(i) of this chapter is modified for VF, VDF, TFE and HFP so that these compounds shall be tested in Chinese hamster ovary (CHO) cells. Cells shall be checked for *Mycoplasma* contamination and may be checked for karyotype stability.

(ii) *Test chemicals—Vehicle.* The requirement under § 798.5375(d)(6)(i) of this chapter regarding vehicle is omitted for VF, VDF, TFE and HFP.

(iii) *Test performance—Treatment with test substance.* The requirement under § 798.5375(e)(3) of this chapter is modified for VF, VDF, TFE and HFP so that cells in the exponential phase of growth shall be treated with test substance both in the presence and absence of metabolic activation. Fluoroalkene-air mixtures in varying concentrations shall be flushed with 10 volumes of treatment mixture at a rate of 500 mL/min. Flasks shall be closed with a cap with a rubber septum. Samples shall be removed with a gas-tight syringe at the beginning and end of the exposure period and analyzed for gas content. Incubation shall be at 37°C on a rocker panel to insure maximum contact between cells and treatment mixture. For experiments without metabolic activation, treatment shall be for 10 hours (including treatment with spindle inhibitor). For experiments with metabolic activation, treatment shall be for 2 hours after which cells shall be washed, refed with culture medium and incubated for an additional 8 hours (including treatment with spindle inhibitor). Alternative treatment schedules may be justified by the investigator.

(iv) *Test performance—Culture harvest time.* The requirement under § 798.5375(e)(5)(i) of this chapter is modified for VF, VDF, TFE and HFP so that multiple harvest times shall be used. If cell cycle length is changed by treatment, the fixation intervals shall be changed accordingly.

(B)(1) For each respective test substance an *in vivo* cytogenetics test shall be conducted with VF, VDF, TFE or HFP in accordance with § 798.5385 of this chapter, if the *in vitro* cytogenetics test conducted pursuant to paragraph (c)(2)(i)(A) of this section produces a negative result.

(2) Modifications to § 798.5385 of this chapter. The following modifications to

§ 798.5385 of this chapter for testing VF, VDF, TFE and HFP are required.

(i) *Test method—Vehicle.* The requirement under § 798.5385(d)(5)(i) of this chapter regarding vehicle is omitted for VF, VDF, TFE and HFP.

(ii) *Test method—Dose levels.* The requirement under § 798.5385(d)(5)(ii) of this chapter is modified for VF, VDF, TFE and HFP so that three dose levels shall be used. The highest dose tested shall be the maximum tolerated dose, that dose producing some indication of cytotoxicity (e.g. partial inhibition of mitosis), or the highest dose attainable.

(iii) *Test method—Route of administration.* The requirement under § 798.5385(d)(5)(iii) of this chapter is modified for VF, VDF, TFE and HFP so that animals shall be exposed by inhalation for 6 hours/day for 5 consecutive days.

(iv) *Test performance.* The requirement under § 798.5385(e) of this chapter is modified for VF, VDF, TFE and HFP as follows: Animals shall be treated with the test substance for 5 days at the selected dose(s). Bone marrow samples shall be taken 6 and 24 hours after the termination of the last treatment. Prior to sacrifice, animals shall be injected IP with an appropriate dose of a spindle inhibitor (e.g. colchicine or Colcemid®) to arrest cells in c-metaphase. Immediately after sacrifice, the bone marrow shall be obtained, exposed to hypotonic solution, and fixed. The cells shall then be spread on slides and stained. Chromosome preparations shall be made following standard procedures. The number of cells to be analyzed per animal shall be based upon the number of animals used, the negative control frequency, the predetermined sensitivity and the power chosen for the test. Slides shall be coded before microscopic analysis.

(C) (1) For each respective test substance a dominant lethal assay shall be conducted with VF, VDF, TFE or HFP in accordance with § 798.5450 of this chapter, if either the *in vitro* cytogenetics test conducted pursuant to paragraph (c)(2)(i)(A) of this section or the *in vivo* cytogenetics test conducted pursuant to paragraph (c)(2)(i)(B) of this section produces a positive result.

(2) Modifications to § 798.5450 of this chapter. The following modifications to § 798.5450 of this chapter for testing VF, VDF, HFP and TFE are required.

(i) *Test method—Description.* The requirement under § 798.5450(d)(2)(i) of this chapter is modified for VF, VDF, TFE and HFP so that several treatment schedules are available. The most widely used schedule require single administration of test substance. However, for this assay, fluoroalkenes

shall be administered by inhalation for 5 consecutive days for 6 hours/day.

(ii) *Test method—Concurrent controls.* The requirement under § 798.5450(d)(4)(i) of this chapter is modified for VF, VDF, TFE and HFP so that concurrent positive and negative (vehicle) controls shall be included in each experiment.

(iii) *Test method—Test chemicals.* The requirement under § 798.5450(d)(5) of this chapter is modified for VF, VDF, TFE and HFP so that exposure shall be by inhalation for 5 consecutive days for 6 hours/day. Three dose level shall be used. The highest dose shall produce signs of toxicity (e.g. slightly reduced fertility) or shall be the highest attainable.

(iv) *Test performance.* The requirement under § 798.5450(e)(1) of this chapter is modified for VF, VDF, TFE and HFP so that individual males shall be mated sequentially to 1 or 2 virgin females. Females shall be left with the males for at least the duration of one estrus cycle or alternatively until mating has occurred as determined by the presence of sperm in the vagina or by the presence of a vaginal plug. In any event, females shall be left with the males for no longer than 7 days.

(v) *Test performance.* The requirement under § 798.5450(e)(2) of this chapter is modified for VF, VDF, TFE and HFP so that the number of matings following treatment shall ensure that germ cell maturation is adequately covered. Mating shall continue for at least 6 weeks.

(vi) *Test performance.* The requirement under § 798.5450(e)(3) of this chapter is modified for VF, VDF, TFE and HFP so that females shall be sacrificed in the second half of pregnancy and uterine contents shall be examined to determine the number of implants and live and dead embryos. The examination of ovaries to determine the number of corpora lutea is left to the discretion of the investigator.

(D)(1) For each respective test substance a heritable translocation assay shall be conducted with VF, VDF, TFE or HFP in accordance with § 798.5460 of this chapter, if the dominant lethal assay conducted pursuant to paragraph (c)(2)(i)(C) of this section produces a positive result.

(2) Modifications to § 798.5460 of this chapter. The following modifications to § 798.5460 of this chapter for testing VF, VDF, TFE and HFP are required.

(i) *Test method—Animal selection.* The requirement under § 798.5460(d)(3)(i) of this chapter is modified for VF, VDF, TFE and HFP so



that the mouse shall be used as the test species.

(ii) *Test method—Vehicle.* The requirement under § 798.5460(d)(5)(i) of this chapter regarding vehicle is omitted for VF, VDF, TFE and HFP.

(iii) *Test method—Dose levels.* The requirement under § 798.5460(d)(5)(ii) of this chapter is modified for VF, VDF, TFE and HFP so that at least two dose levels shall be used. The highest dose level shall result in toxic effects (which shall not produce an incidence of fatalities which would present a meaningful evaluation) or shall be the highest dose attainable.

(iv) *Test method—Route of administration.* The requirement under § 798.5460(d)(5)(iii) of this chapter is modified for VF, VDF, TFE and HFP so that animals shall be exposed by inhalation.

(v) *Test performance—Treatment and mating.* The requirement under § 798.5460(e)(1) of this chapter is modified for VF, VDF, TFE and HFP so that the animals shall be dosed with the test substance 6 hr/day, 7 days/week over a period of 35 days. After treatment, each male shall be caged with 2 untreated females for a period of 1 week. At the end of 1 week, females shall be separated from males and caged individually. When females give birth, the day of birth, litter size and sex of progeny shall be recorded. All male progeny shall be weaned and all female progeny shall be discarded.

(ii) *Reporting requirements.* (A) Mutagenic effects—chromosomal aberration testing shall be completed and final results submitted to the Agency after the effective date of the rule as follows: *In vitro* cytogenetics, 4 months; *in vivo* cytogenetics, 12 months; dominant lethal assay, 24 months; heritable translocation assay, 36 months.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(3) *Subchronic toxicity—(i) Required Testing.* (A) Inhalation subchronic toxicity tests shall be conducted with HFP in accordance with the TSCA Test Guideline specified in § 798.2450 of this chapter.

(B) Modifications to § 798.2450 of this chapter. The following modifications to § 798.2450 of this chapter for testing HFP are required.

(1) *Test procedures—Exposure conditions.* The requirement under § 798.2450(d)(5) of this chapter is modified so that the animals shall be exposed to the test substance 6 hours per day, 5 days per week for 90 days.

(2) *Test procedures—Observation of animals.* The requirement under § 798.2450(d)(10)(v) of this chapter is modified so that animals shall be weighed weekly, and so that food and water consumption shall also be measured weekly.

(3) *Test report—Individual animal data.* The requirement under § 798.2450(e)(3)(iv)(D) of this chapter is modified to read "Food and water consumption data."

(ii) *Reporting requirements.* (A) The required subchronic toxicity tests shall be completed and final results submitted to the Agency within 18 months of the effective date of the final rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(4) *Reproductive toxicity—(i) Required testing.* A reproductive toxicity test shall be conducted with VDF by inhalation in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The reproductive toxicity test shall be completed and final results submitted to the Agency within 29 months of the effective date of the final test rule.

(B) Progress reports shall be submitted to the Agency quarterly beginning 90 days after the effective date of the final rule.

(5) *Oncogenicity—(i) Required testing.* Oncogenicity tests shall be conducted in both rats and mice by inhalation with VF and in mice with VDF in accordance with § 798.3300 of this chapter.

Oncogenicity testing by inhalation shall be conducted in rats with VDF in accordance with the protocols submitted by Fluoroalkenes Industry Group (FIG), One Customs House Square, Suite 314, Wilmington, Del. 19801, and previously approved by the Agency which are incorporated by reference. These protocols are available for inspection at the Office of the Federal Register

Information Center, Rm. 8301, 1100 L Street, NW., Washington, DC 20408. A copy of these protocols has also been included in the public record for this rule (docket no. OPTS-42002C) and is available for inspection in the OPTS Reading Rm., E-107, 401 M St., SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

Oncogenicity tests shall also be conducted by inhalation in both rats and mice with TFE and HFP in accordance

with § 798.3300 of this chapter for whichever of these substances yields a positive test result in any one of the following mutagenicity tests: The *in vitro* cytogenetics assay conducted pursuant to paragraph (c)(2)(i)(A) of this section, the *in vivo* cytogenetics assay conducted pursuant to paragraph (c)(2)(i)(B) of this section, the mammalian cells in culture assay conducted pursuant to paragraph (c)(i)(1)(B) of this section or the sex-linked recessive lethal assay in *Drosophila melanogaster* conducted pursuant to paragraph (c)(1)(i)(C) of this section. Criteria for positive test results are established in 40 CFR 798.5375, 798.5385, 798.5300 and 798.5275 of this chapter, respectively.

(ii) *Reporting requirements.* (A) The oncogenicity testing shall be completed and final results submitted to the Agency within 53 months of the effective date of the final rule for VF and VDF and 67 months for TFE and HFP.

(B) Progress reports shall be submitted quarterly beginning 90 days after the effective date of the final rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-0033.)

[FR Doc. 85-28529 Filed 11-5-85; 8:45 am]  
BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA-6676]

### Proposed Flood Elevation Determinations; Pennsylvania; Correction

**AGENCY:** Federal Emergency  
Management Agency.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 50 FR 38556 on September 23, 1985. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Township of Washington, Franklin County, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.



**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Washington, previously published at 50 FR 38556 on September 23, 1985, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

#### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 401 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Source of flooding	Location	Elevation in feet National Geodetic vertical datum
West Branch Antietam Creek	Approximately 1,600' downstream of Marsh Road.	*589
	Upstream side of State Route 16/Buchanan Trail East.	*608
	Upstream side of Western Maryland Railroad.	*623
	Upstream side of Wayne Highway/State Route 316.	*632
East Branch Antietam Creek	At upstream corporate limits	*645
	Approximately 800' downstream of Goods Dam Road.	*577
	At upstream side of Anthony Highway/State Route 997.	*593
	Approximately 300' upstream of State Route 16/Buchanan Trail East.	*622
	At upstream side of Eigenbrode Lane.	*673
	At downstream side of Mentzer Gap Road/LR28024.	*688
Red Run	Approximately 1,150' downstream of upstream corporate limits.	*753
	At confluence with East Branch Antietam Creek.	*599
	Approximately 200' upstream of Beer Road/T-370.	*608
	Approximately 500' upstream of Amsterdam Road.	*665
Falls Creek	Approximately 75' downstream of Skiway Drive.	*776
	At confluence with Red Run	*652
	At downstream side of Midvale Road/LR28024.	*667
	At downstream side of Penmar Road/LR28026.	*765

Issued: October 25, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-26443 Filed 11-5-85; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 18

[Gen Docket No. 85-303]

#### Exempt Medical Ultrasonic Diagnostic and Monitoring Equipment from Technical Standards; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed Rule; Correction.

**SUMMARY:** These Errata correct a Notice of Proposed Rule Making recently adopted in Gen. Docket 85-303, in which the FCC proposed to exempt medical ultrasonic diagnostic and monitoring equipment from the technical standards specified in Part 18 of its Rules, published on October 23, 1985, 50 FR 42967.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Liliane Volcy, Office of Science and Technology, Technical Standards Branch, Washington, DC 20554, (202) 653-8247.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 18

Medical devices, Scientific equipment, Reporting requirements.

#### Errata

In the matter of amendment of Part 18 of the FCC rules to exempt medical ultrasonic diagnostic and monitoring equipment from technical standards; GEN Docket No. 85-303. Released: October 31, 1985.

The Commission's Notice of Proposed Rule Making in General Docket 85-303, FCC 85-549, adopted October 9, 1985, and released October 17, 1985, is corrected as follows:

1. On page 42969, in the first column, in paragraph 8, the frequency 44.3 MHz is corrected to read 49.2 MHz.
2. On page 42969, in the third column, in paragraph 11, the following sentence was omitted inadvertently from the end of the paragraph: "Nevertheless, the Field Operations Bureau will, prior to issuance of the final Report and Order, conduct a study of several existing ultrasonic equipment installations to determine whether any harmful interference now exists, and what the potential for interference may be."

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 85-26482 Filed 11-5-85; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

#### Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This notice denies a petition for rulemaking filed by Philip F. Eckert, Cdr. (Ret.) to amend Motor Vehicle Safety Standard No. 108 to require hazard warning signals to continue to flash when the brake pedal is depressed, in those rear lighting configurations where the turn signal lamps are optically combined with the stop lamps. While such a system is permissible today, its provision is at the option of the manufacturer which also has the choice of installing a system in which the hazard warning signal is inoperative when the stop lamp is activated. The petition is denied principally because there are no data showing that the system petitioned for would make a greater contribution to accident avoidance. Further, two of the three principal U.S. manufacturers have indicated that they plan to incorporate the system petitioned for in their passenger cars.

**FOR FURTHER INFORMATION CONTACT:** Kevin Cavey, Crash Avoidance Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2153).

**SUPPLEMENTARY INFORMATION:** Hazard warning systems are installed on motor vehicles for use to indicate a disabled or slow moving vehicle in the roadway ahead. They operate through the turn signal lamps, which Standard No. 108 permits to be either yellow or red in color at the rear. In those rear lighting configurations where the turn signal lamps are red, they are frequently optically combined with taillamps and stop lamps. Current hazard warning systems are wired to operate in one of two ways. Under the first method, the hazard warning signal flashing ceases when the brake pedal is applied, and a steady-burning red light is presented to the viewer. Under the second method, the warning signal is not affected by application of the brake pedal, and it continues to flash. Philip F. Eckert of Chevy Chase, Maryland, petitioned the



agency for rulemaking to mandate the second method, and to require manufacturers to prepare kits for conversion from the first method to the second. For the reasons set forth below, the agency has denied his petition.

Petitioner argues that the continually flashing system is desirable as, in his opinion, a flashing light is more readily perceivable from the rear and more likely to prevent a rear end collision than the steady-burning stop lamp. There are no data either submitted by the petitioner or known to NHTSA showing that vehicles presently wired in this manner have greater potential for accident avoidance than those that are not. In the absence of such data, there is no compelling reason to mandate the system petitioned for.

It should also be noted that all new passenger cars are now required to have a center-high mounted stop lamp and it is anticipated that many of the rear end accidents with which the petitioner is concerned will not occur, or will be reduced in severity.

The agency understands that both GM and Ford currently equip all applicable vehicles with a system in which the brake signal overrides the hazard warning signal. Chrysler uses a mixture of systems; some in which the brake signal overrides the hazard warning signal and others in which the hazard warning signal overrides the brake signal.

Further, Ford and Chrysler have indicated that they voluntarily plan to wire all their vehicles as requested by the petitioner. Both Chrysler and Ford have stated that by 1987 they plan to have all passenger cars equipped with combined stop and turn signal lamps which continue to flash when both hazard warning and braking controls are actuated. GM is also considering the merits of the system. A large percentage of imported vehicles and many domestic vehicles use amber rear turn signal systems, in which the stop lamps and turn signal lamps are not combined. For these systems, the question of signal ambiguity does not arise since each can be independently indicated. Thus, the agency has concluded that a significant portion of vehicles will perform in the manner requested without the necessity of rulemaking. For these reasons, the agency has decided to deny the Eckert petition.

The petitioner also requested that manufacturers be required to produce conversion kits, but he did not specify whether his intent was for the agency to order retrofit of existing vehicles, or simply to make conversion kits available for those who wished the alternative system. NHTSA lacks legal

authority to require retrofitting of vehicles with a new safety systems, and in view of its decision not to propose mandating the alternative system, denies this aspect of the Eckert petition as well.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50 and 501.8)

Issued: October 31, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-26505 Filed 11-5-85; 8:45 am]

BILLING CODE 4810-59-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 652

[Docket No. 50579-5122]

### Atlantic Surf Clam and Ocean Quahog Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule; technical amendments and request for public comment.

**SUMMARY:** This document proposes technical amendments to the rule implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). The intended effect is to correct the purpose, prohibitions, weather day and closed area sections of the regulations.

**DATE:** Comments will be accepted until December 6, 1985.

**FOR FURTHER INFORMATION CONTACT:** Monique Rutledge, 617-281-3600, extension 272.

**SUPPLEMENTARY INFORMATION:** Six provisions contained in amendments to the regulations implementing the FMP, § 652.1 (Purpose), § 652.7 (Prohibitions), § 652.22 (Effort restrictions), and § 652.23 (Closed areas), are corrected in this rule.

The statement of purpose of the regulations at § 652.1 makes reference only to the regulation of fishing for surf clams and ocean quahogs although the regulation of other activities is encompassed by the FMP such as the possession of surf clams and ocean quahogs harvested under the jurisdiction of the FMP (page 57, section XIII-3, Amendment 3), approved by NOAA and published as a final rule on January 29, 1982 (47 FR 4268). Language is added to the Purpose section stating that these

regulations implement the terms of the FMP clarifying that the scope of the regulations encompasses regulation of all activities included in the FMP and not just fishing for surf clams and ocean quahogs.

The prohibition at § 652.7(a) as now written states that permit holders will not "catch and retain on board" any surf clams or ocean quahogs during closed seasons or in closed areas as specified by the regulations. The intent of this prohibition is to prevent for conservation purposes unauthorized harvest of surf clams and ocean quahogs. However, this language appears to require that the "catching" or "retaining" of surf clams be witnessed in order to allege violation of the regulations. The loophole created by this language has hindered enforcement efforts.

To better reflect the intent of the provision, § 652.7(a) is revised to prohibit permit holders from fishing for surf clams or ocean quahogs during closed seasons or in closed areas. The prohibition against "fishing for" versus "catching and retaining" permits enforcement when a vessel is observed with its gear in the water. This revision is consistent with the definition of "fishing" in § 652.2 which encompasses any activity which can be expected to result in the catching, taking, or harvesting of fish, or operations at sea in support of fishing, and not merely the catching of fish.

The prohibition at § 652.7(f) expressly permits authorized officers to search fishing vessels incident to enforcement efforts. The substance of the FMP, however, which encompasses possession of surf clams in places other than aboard fishing vessels, e.g. on docks and at processing facilities, provides the grounds for searches of other areas of custody. Clarification is made to this section to expressly include searches of places other than fishing vessels.

Current regulations at § 652.5 require dealers, owners, and operators of vessels to file accurate reports of various activities on a regular basis. The prohibition at § 652.7(e) prohibits undertaking certain actions without completing those reports. However, neither section clearly defines a prohibition for filing false reports. This is a significant omission in a system which depends upon reliable data on which to base management actions. A new prohibition paragraph (m) is added to make it an express violation to knowingly include false information in the reports required under § 652.5.



Section 652.22(a)(4) of the regulations allows fisherman to claim a make-up period during November through April if weather or sea conditions endanger the vessel or crew or interfere with effective fishing. The regulation, as presently written, is interpreted to allow make-up periods only during the period of November 1 through April 30. An unintentional impact of this provision is the potential for its inequitable treatment of fisherman. Depending on which days of the week November 1 and April 30 fall, fisherman can claim a make-up period during the first week the provision is effective, the first and the last week, or neither the first nor the last week, depending on their fishing day. In order to assure that all participants in the fishery share an equal opportunity to claim a make-up day during the winter months, NOAA proposes tailoring the duration of the make-up period provision to the fishing week in the Mid-Atlantic Area. Thus, the make-up period may be claimed as of the first Sunday in November through the last Thursday in April.

Two sections of the regulations, § 652.22(f) and § 652.23(d), are unclear as to observations that must be made to support a presumption that violations of fishery closures or of closed areas have occurred. The first part of each of the sections appear to provide that violations may be presumed if observation is made of either clams aboard or fishing gear in the water. The last sentence in each section, however, could be read to require observations of clams aboard in addition to gear in the water where observation of gear is at issue. Changes made below to the respective sections clarify that presumptions may be made that violations of the respective sections have occurred if observation is made of either clams aboard or gear in the water after closure of the fishery or in closed areas.

#### Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

#### List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: October 31, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

#### PART 652—[AMENDED]

It is proposed to amend 50 CFR Part 652 as follows:

1. The authority citation for Part 652 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 652.1 is amended by designating the existing section as (a) and adding a new paragraph (b) to read as follows:

#### § 652.1 Purpose

(b) These regulations implement the Fishery Management Plan for Surf Clam and Ocean Quahog Fisheries.

3. In § 652.7, paragraph (a) introductory text and paragraph (f)(1) are revised and paragraph (m) is redesignated as (n) and a new paragraph (m) is added to read as follows:

#### § 652.7 Prohibitions

(a) No permit holder may fish for any surf clams or ocean quahogs: \*

(f) \*

(1) Refuse to permit an authorized officer to board a fishing vessel subject to such a person's control no matter where that vessel may be located, or to enter areas of custody subject to such a person's control, for purposes of conducting any search or inspection in

connection with the enforcement of the Act, these regulations, or any other regulations issued under the Act.

(m) No dealer, vessel owner, operator, or other person will knowingly submit false information in records and reports required to be kept and filed under § 652.6.

4. In § 652.22, paragraphs (a)(4) and (f)(1) are revised to read as follows:

#### § 652.22 Effort restrictions.

(a) \*

(4) *Make-up periods.* Commencing at 0001 hours on the first Sunday of November and ending at 2400 hours on the last Thursday of April, and during the intervening months, fishermen may claim a make-up period, if in the opinion of the vessel operator, weather or sea conditions would prevent effective fishing or endanger the vessel or crew.

(f) *Presumption.* (1) The presence of surf clams or ocean quahogs aboard any vessel engaged in the surf clam or ocean quahog fishery or the presence of any part of a vessel's gear in the water more than 12 hours after a closure occurs under this section will be *prima facie* evidence that such vessel was fishing for surf clams or ocean quahogs in violation of these regulations.

5. In § 652.23, paragraph (d) is revised to read as follows:

#### § 652.23 Closed areas.

(d) *Presumption.* In closed areas, the presence of surf clams or ocean quahogs aboard any fishing vessel or the presence of any part of the vessel's gear in the water is *prima facie* evidence that such vessel was fishing for surf clams or ocean quahogs in violation of these regulations.

[FR Doc. 85-26533 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-22-M



# Notices

Federal Register

Vol. 50, No. 215

Wednesday, November 6, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

November 1, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

### Extension

#### • Agricultural Cooperative Service New Cooperative Volume and Structure On occasion

Individuals or households; Farm; 245 responses; 245 hours; not applicable under 3504(h)

William R. Seymour (202) 447-8396

#### • Agricultural Marketing Service Grapefruit Grown in the Interior District in Florida—Marketing Order 913

On occasion, Weekly, Annually, Once every three years

Farms; Businesses or other for-profit; 1,398 responses; 324 hours; not applicable under 3504(h)

William J. Doyle (202) 447-5975

#### • Agricultural Marketing Service Peaches Grown in Mesa County, Colorado—Marketing Order 919

On occasion; Once every three years  
Farm; Businesses or other for-profit; 60 responses; 15 hours; not applicable under 3504(h)

William J. Doyle (202) 447-5975

#### • Agricultural Marketing Service Oregon-Washington-California Winter Pears—Marketing Order 927

##### Committee Forms

##### Semi-monthly

Farms; Businesses or other for-profit;  
Small businesses or organizations;  
4,733 responses; 2,793 hours; not applicable under 3504(h)

William J. Doyle (202) 447-5975

#### • Agricultural Marketing Service Irish Potatoes Grown in Southeastern States—Marketing Order 953

Recordkeeping; Monthly; Annually  
Farms; Businesses or other for-profit;  
1,791 responses; 297 hours; not applicable under 3504(h)

Charles W. Porter (202) 447-2615

#### • Agricultural Marketing Service Lemons Grown in California and Arizona—Marketing Order No. 910

On occasion; Weekly; Annually  
Farms; Businesses or other for-profit;  
80,128 responses; 11,590 hours; not applicable under 3504(h)

William J. Doyle (202) 447-5975

#### • Agricultural Stabilization and Conservation Service

CFR 1423 Processed Commodities  
Warehouse Standards CCC-29, CCC-32, CCC-55, CCC-56, CCC-513, CCC-560

##### On occasion

Businesses or other for-profit; Small businesses or organizations; 1,969 responses; 1,769 hours; not applicable under 3504(h)

Barry W. Klein (202) 447-4647

### New

#### • Agricultural Stabilization and Conservation Service On-Farm Grain/Oilseed Storage Capacity Survey

##### One time

Farms; 2.5 million responses; 125,000 hours; not applicable under 3504(h)

Larry Walker (202) 382-9685

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 85-26493 Filed 11-5-85; 8:45 am]

BILLING CODE 3410-01-M

### Agricultural Stabilization and Conservation Service

#### Feed Grain Donations for the Lower Brule Sioux Reservation Indian Tribe in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Lower Brule Sioux Indian Tribe of the Lower Brule Sioux Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Lower Brule Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through



May 15, 1986, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC, on November 1, 1985.

Milton J. Hertz,

*Acting Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 85-26437 Filed 11-5-85; 8:45 am]

BILLING CODE 3410-05-M

### Cooperative State Research Service Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date: December 3, 1985.

Time: 8:00 a.m.—5:00 p.m.

Place: Breckenridge Kings Inn, 9600 Natural Bridge Road, St. Louis, Missouri.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. Edward M. Wilson, Recording Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 209 Justin Smith Morrill Bldg., Washington, DC 20251; Telephone: (202) 447-4587.

Done at Washington, DC, this 29th day of October 1985.

John Patrick Jordan,

*Administrator, Cooperative State Research Service.*

[FR Doc. 85-26436 Filed 11-5-85; 8:45 am]

BILLING CODE 3410-22-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping Duty or Countervailing Duty Order, Finding, or Suspension Agreement; Opportunity To Request Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of Opportunity to Request Administrative Review of Antidumping Duty or Countervailing

#### Duty Order, Finding, or Suspension Agreement.

### Background

Each year during the anniversary month of the publication of an antidumping duty or countervailing duty order, finding, or suspension agreement, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping duty or countervailing duty order, finding, or suspension agreement.

### Opportunity to Request a Review

Not later than November 30, 1985, interested parties may request administrative review of the following orders, findings, or suspension agreements, with anniversary dates in November, for the following periods:

Antidumping duty proceeding	Review period
Dry Cleaning Machinery from the Federal Republic of Germany.....	11/01/84-10/31/85
Carbon Steel Wire Rods from Trinidad/Tobago.....	11/01/84-10/31/85
Choline Chloride from Canada.....	4/30/84-10/31/85
Bicycle Speedometers from Japan.....	11/01/84-10/31/85
Carbon Steel Wire Rods from Spain.....	5/08/84-09/30/84
Carbon Steel Wire Rods from Argentina.....	05/08/84-10/31/85
Titanium Sponge from Japan.....	05/11/84-10/31/85
Countervailing duty proceeding	Review period
Woolen Garments from Argentina.....	01/01/84-12/31/84
Oil Country Tubular Goods from Argentina.....	09/06/84-12/31/84
Oil Country Tubular Goods from Mexico.....	09/12/84-09/30/84
Compressors from Singapore.....	01/01/84-12/31/84
Sodium Gluconate from the European Communities.....	11/01/83-12/31/84

A request must conform to the Department's interim final rule published in the *Federal Register* (50 FR 32556) on August 13, 1985. Five copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, D.C. 20230.

The Department will publish in the *Federal Register* a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for all requests received by November 30, 1985.

If the Department does not receive by November 30, 1985, a request for review of entries covered by an order or finding listed in this notice and for a period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash

deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 31, 1985.

Gilbert B. Kaplan,

*Acting Deputy Assistant Secretary, Import Administration.*

[FR Doc. 85-26467 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DS-M

### Withdrawal of Application for Duty-Free Entry of Scientific Instruments; Berea College

Berea College has withdrawn Docket Number 85-264, an application for duty-free entry of a Planetarium Projector. Accordingly, further administrative proceedings will not be taken by the Department of Commerce with respect to this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 85-26471 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DS-M

### Applications for Duty-Free Entry of Scientific Instruments; Clarkson University

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket number: 86-020. Applicant: Clarkson University, Potsdam, NY 13676. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL Limited, Japan.



Intended use: The instrument is intended to be used for the study of colloidal particles of various kinds. Specifically, shape and structure of the particulate material will be investigated in connection with a number of research projects. The experiments to be conducted will consist of particle characterization and studies of their nucleation and growth. Application received by Commissioner of Customs: October 16, 1985.

Docket number: 86-021. Applicant: National Bureau of Standards, Electricity Division, Building 220, Room B258, Gaithersburg, MD 20899. Instrument: Superconducting Magnet System. Manufacturer: Cryogenic Consultants limited, United Kingdom. Intended use: The instrument is intended to be used for the study of the quantum Hall effect with the objective of developing a new resistance standard by which the United States' unit of resistance will be maintained. The quantum Hall effect will become the new resistance standard. Application received by Commissioner of Customs: October 17, 1985.

Docket number: 86-024. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Thermal ionization Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotopes Limited, United Kingdom. Intended use: The instrument will be used for isotopic analyses of several elements extracted from geologic samples for research in the fields of isotope geology, geochemistry and geochronology. The materials to be analyzed are individual elements, as salts, chemically isolated from natural (and experimental) rock and mineral samples. The elements to be analyzed include (but are not restricted to): Rb, Sr, Ba, La, Ce, Nd, Sm, Eu, Gd, Dy, Er, Yb, Pb, Th and U. Experiments to be conducted will include:

1. Geochemical tracer studies of Central American volcanic rocks, and detailed studies of individual Hawaiian volcanoes.
2. Trace element distribution studies of ultramafic xenoliths collected from the western U.S., Hawaii, and S. Africa.
3. Geochronological studies of metamorphic terrains of the northeast U.S.

In addition the instrument will be used in upper-level undergraduate and graduate courses such as Isotope Geochemistry (Geol 551) and for independent study theses (Geol 493). Application received by Commissioner of Customs: October 21, 1985.

Docket number: 86-025. Applicant: University of Massachusetts Medical

Center, 55 Lake North, Worcester, MA 01605. Instrument: Dual Wave Length Fluorescence Stop-Flow Spectrophotometer. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Intended use: Studies of human erythrocyte sugar transport protein. Experiments will be conducted to measure the time constants in bilayer sugar translocation in order to understand the role of bilayer lipids in regulating protein mediated sugar transport. Application received by Commissioner of Customs: October 21, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-26472 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-09-M

#### Applications for Duty-Free Entry of Scientific Instruments; State of Minnesota, Department of Natural Resources

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 [Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301], we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket number: 86-007. Applicant: State of Minnesota, Department of Natural Resources, Division of Waters, Box 32, 500 Lafayette Road, St. Paul, MN 55146. Instrument: Ground Conductivity Meter, Model EM-34-3. Manufacturer: Geonics, Incorporated, Canada. Intended use: The instrument is intended to be used to measure the terrain conductivity of the earth particularly to determine the geometry of the contact between glacial drift and bedrock, to determine the properties of relatively shallow aquifers and of mineral deposits for research purposes. Application received by Commissioner of Customs: October 11, 1985.

Docket number: 86-008. Applicant: University of Virginia Medical Center,

Department of Pathology, Box 168, Charlottesville, VA 22908. Instrument: Mass Spectrometer, Model 8230B with Accessories. Manufacturer: Finnigan MAT, GmbH, West Germany. Intended use: Studies of blood serum, urine, and tissue extracts with a concentrated effort directed towards the measurement in these materials of prostanoids, dopamine, 1,25-dihydroxycholecalciferol and drugs, and metabolites that inhibit prolactin secreting tumors. Chemical messengers of insulin action will be characterized. Application received by Commissioner of Customs: October 11, 1985.

Docket number: 86-010. Applicant: Oregon State University, Purchasing Department, Corvallis, OR 97331. Instrument: System for Alternating Detection of Positive/Negative Ion Conversion Kit for MAT CH-7 Mass Spectrometer. Manufacturer: AMD Intectra GmbH, West Germany. Intended use: The instrument is intended to be used to carry out accurate mass measurements and high mass ion data acquisition. Research projects will include: (1) Negative ion chemical ionization mass spectrometry of polychlorinated organics which involves a systematic investigation of the negative chemical ionization (CI) conditions and (2) fast atom bombardment of pyrrolizidine alkaloid-DNA adducts in a program to determine where the carcinogenic research pyrrolizidine alkaloids bind to DNA, and how variations on the alkaloid structures alter the ratios of different binding sites. The instrument will also be used in several courses in which the fundamentals of organic mass spectrometry are taught and the courses in which mass spectrometry is demonstrated to the students. In addition, the instrument will be used for the training of graduate students and postdoctoral fellows in environmental health sciences, chemistry, agricultural chemistry, biochemistry, pharmaceutical chemistry, and in forest products. Application received by Commissioner of Customs: October 11, 1985.

Docket number: 86-017. Applicant: University of Hawaii, Department of Agronomy & Soil Science, 1910 East-West Road, Room 101, Honolulu, HI 96822. Instrument: Electro-Ultrafiltration Unit, Model 724. Manufacturer: Vogel Medizinsche Technik & Elektronik, West Germany. Intended Use: The instrument is intended to be used for studies of soils and clay minerals during experiments conducted to obtain simplified testing of crop nutrient availability. In addition, the instrument will be used to teach the principles and methods of assessing soil



chemical and fertility status.  
Application received by Commissioner  
of Customs: October 17, 1985.

Docket number: 86-019. Applicant:  
University of California, 405 Hilgard  
Avenue, Los Angeles, CA 90024.  
Instrument: Electron Microscope, Model  
JEM-1200EX with Accessories.  
Manufacturer: JEOL, Japan. Intended  
use: The instrument is intended to be  
used to study cellular and subcellular  
structures, including ribosomes,  
lysosomes, and viruses. The research to  
be conducted will include the following  
projects:

- (1) Studies of the conformation of  
ribosomal RNA within the bacterial  
ribosome.
- (2) Studies of protein location on the  
subunits of the *E. coli* ribosome.
- (3) Comparative studies of ribosome  
structure.
- (4) Investigations of the receptor  
specificity of influenza viruses.
- (5) Investigations of the formation of  
lysosomes within cultured human  
fibroblasts.
- (6) Studies of the molecular process of  
myelination in cultured rat brain cells.
- (7) Studies of immunoglobulin and  
oncogene DNA molecules.

All of this research is aimed at  
fundamental understanding of the  
process of cellular growth and  
development and the interactions of  
cells and their components with other  
cells, organelles, or molecules.  
Application received by Commissioner  
of Customs: October 17, 1985.

(Catalog of Federal Domestic Assistance  
Program No. 11.105, Importation of Duty-Free  
Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-26473 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DS-M

#### Withdrawal of Application for Duty-Free Entry of Scientific Instruments; North Carolina State University

The North Carolina State University  
has withdrawn Docket Number 85-206,  
an application for duty-free entry of  
Melt Spinning Apparatus. Accordingly,  
further administrative proceedings will  
not be taken by the Department of  
Commerce with respect to this  
application.

(Catalog of Federal Domestic Assistance  
Program No. 11.105, Importation of Duty-Free  
Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-26474 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DS-M

#### National Oceanic and Atmospheric Administration

##### Permits; Marine Mammals; Modification to Permits

Pursuant to the provisions of § 216.33  
(d) and (e) of the Regulations Governing  
the Taking and Importing of Marine  
Mammals (50 CFR Part 216), and  
§ 222.25 of the regulations governing  
endangered species (50 CFR Part 222),  
Permit No. E5 issued to the Northwest  
and Alaska Fisheries Center, National  
Marine Fisheries Service, 7600 Sand  
Point Way, BIN C15700, Seattle,  
Washington 98115, on March 3, 1976 (41  
FR 10248), as amended February 22,  
1979, and December 31, 1981 (46 FR  
1765) Permit No. 71 issued on January 21,  
1975 (40 FR 4325), as amended October  
10, 1975 (40 FR 47817), March 9, 1979 (44  
FR 13060), December 31, 1979 (44 FR  
77229), October 10, 1980 (45 FR 67404),  
October 18, 1982 (47 FR 46350), and  
January 29, 1985 (50 FR 3950); Permit No.  
113 issued on August 21, 1975 (40 FR  
38179), as modified December 31, 1981  
(46 FR 1765), Permit No. E9 issued on  
January 23, 1976 (41 FR 5413) as  
amended on September 9, 1976 (41 FR  
41736), and December 31, 1981 (FR 1765);  
Permit No. 116 issued on October 31,  
1975 (40 FR 51489) as modified on  
September 9, 1976 (41 FR 41736), and  
December 31, 1981 (46 FR 1765); Permit  
No. 128 issued on March 12, 1976 (41 FR  
11593) as modified September 9, 1976 (41  
FR 41736) and December 31, 1981 (46 FR  
1765); Permit No. 136 issued on June 15,  
1976 (41 FR 25920) as modified on June  
27, 1977 (42 FR 35876), May 22, 1980 (45  
FR 34321); and Permit No. 143 issued on  
July 28, 1976 (41 FR 32823), as modified  
on October 18, 1977 (42 FR 55631), July  
27, 1984 (46 FR 38950), and June 14, 1985  
(50 FR 25734), are further modified as  
follows:

1. *Permit No. E5*  
Section B-6 is modified by deleting  
"December 31, 1985" and  
substituting therefor the following:  
"December 31, 1986."
2. *Permit No. E9*  
Section B-9 is modified by deleting  
"December 31, 1985" and  
substituting therefor the following:  
"December 31, 1986."
3. *Permit No. 71*  
Section B-5 is modified by deleting  
"December 31, 1985" and  
substituting therefor the following:  
"December 31, 1986."
4. *Permit No. 113*  
Section B-4 is modified by deleting  
"December 31, 1985" and  
substituting therefor the following:  
"December 31, 1986."
5. *Permit No. 116*

Section B-9 is modified by deleting  
"December 31, 1985" and  
substituting therefor the following:  
"December 31, 1986."

##### 6. *Permit No. 128*

Section B-9 is modified by deleting  
"December 31, 1985" and  
substituting therefor the following:  
"December 31, 1986."

##### 7. *Permit No. 136*

Section B-11 is modified by deleting  
"December 31, 1985" and  
substituting therefor the following:  
"December 31, 1986."

##### 8. *Permit No. 143*

Section B-3 is modified by deleting  
"December 31, 1985" and  
substituting therefor the following:  
"December 31, 1986."

These modifications are effective on  
December 31, 1985.

The Permits, as modified, and  
documentation pertaining to the  
modifications are available for review in  
the following offices:

Assistant Administrator for Fisheries,  
National Marine Fisheries Service, 3300  
Whitehaven Street, Northwest,  
Washington, D.C.;  
Regional Director, Northwest Region,  
National Marine Fisheries Service, 7600  
Sand Point Way, NE, BIN C15700 Seattle,  
Washington, 98115;  
Regional Director, Alaska Region, National  
Marine Fisheries Service, P.O. Box 1668,  
Juneau, Alaska 99802;  
Regional Director, Southwest Region, 300  
South Ferry Street, Terminal Island,  
California 90731;  
Regional Director, Northeast Region, 14 Elm  
Street, Federal Building, Gloucester,  
Massachusetts 01930-3799; and  
Regional Director, Southeast Region, 9450  
Koger Boulevard, St. Petersburg, Florida  
33702.

Dated: October 30, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries  
Resource Management, National Marine  
Fisheries Service.

[FR Doc. 85-26488 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-22-M

#### [Modification No. 1 to Permit No. 482]

##### Marine Mammals; Permit Modification; Southwest Fisheries Center

Notice is hereby given that pursuant  
to the provisions of § 216.33(d) and (e) of  
the Regulations Governing the Taking  
and Importing of Marine Mammals (50  
CFR Part 216), and § 222.25 of the  
regulations governing endangered  
species permits (50 CFR Part 222),  
Scientific Research Permit No. 482  
issued to the Southwest Fisheries  
Center, National Marine Fisheries  
Service, P.O. Box 271, La Jolla,



California 92038, on September 12, 1984 (49 FR 36899) is modified as follows:

Section A.1 is deleted and replaced by:

1. This permit authorizes the taking of Hawaiian monk seals (*Monachus schauinslandi*) as follows:

Up to eighty (80) subadult and adult males from Laysan Island may be bleed-marked; up to ten (10) of these may be captured, maintained for up to seven (7) days, blood sampled, tagged on both flippers and translocated from Laysan Island to Johnston Atoll; up to twenty (20) may be captured and permanently maintained in captivity.

This modification became effective on October 29, 1985.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification: (1) Was applied in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220-222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

Dated: October 31, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-26489 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

October 31, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive

published below to the Commissioner of Customs to be effective on November 6, 1985. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

### Background

On July 1, 1985, a notice was published in the *Federal Register* (50 FR 27040) which announced establishment of import restraint levels for the entry and withdrawal from warehouse for consumption in the United States during each of five thirty-day periods beginning on July 1, 1985 and extending through November 27, 1985 of man-made fiber work gloves in Category 631pt. (only T.S.U.S. items 704.3215, 704.8525, 704.8550 and 704.9000) and cotton printcloth in Category 320pt. (only T.S.U.S. items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98), among other categories. The levels were applicable to goods in these categories, produced or manufactured in Indonesia and exported during the periods which began, in the case of Category 631pt., on September 17, 1984 and extended through June 30, 1985; and, in the case of Category 320pt., July 31, 1984 through June 30, 1985.

The purpose of this notice is to advise the public that, effective on November 6, 1985, levels of 130,000 dozen pairs and 647,486 square yards will be applicable to Categories 631pt. and 320pt., respectively, imported during each of five thirty-day periods beginning on that date and extending through April 4, 1986, which were exported during the periods cited above. Accordingly, in the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreement directs the Commissioner of Customs to cancel the directive of June 27, 1985 and establish new staged entry periods for Category 320pt., and 631pt., through April 4, 1986 at levels of 130,000 dozen pairs and 647,486 square yards, respectively, per thirty-day period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 F.R. 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff

Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

October 31, 1985.

### Committee for the Implementation of Textile Agreements

Commissioner of Customs,  
Department of the Treasury,  
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of June 27, 1985 which directed you, effective on July 1, 1985, to permit entry of cotton and man-made fiber textile products in certain categories, produced or manufactured in Indonesia and exported during specified restraint periods, which were in excess of the limits established for those periods.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985 between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on November 6, 1985, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Indonesia and exported during the periods noted below which were in excess of the limits established for those periods:

Category	Amount to be entered per 30-day period	Previous restraint period
320 pt. <sup>1</sup>	647,486 square yards	July 31, 1984 to June 30, 1985.
631 pt. <sup>2</sup>	130,000 dozen pairs	Sept. 17, 1984 to June 30, 1985.

<sup>1</sup>In Category 320 only T.S.U.S. items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

<sup>2</sup>In category 631 only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 704.9000.

The thirty day periods shall be as follows: November 6, 1985–December 5, 1985; December 6, 1985–January 4, 1986; January 5, 1986–February 3, 1986; February 4, 1986–March 5, 1986; March 6, 1986–April 4, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5. U.S.C. (a)(1).



Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-26478 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DR-M

# **Import Restraint Limits Under a New Bilateral Agreement Concerning Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia**

October 31, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 6, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

## **Background**

The Governments of the United States and the Republic of Indonesia exchanged notes dated September 25 and October 3, 1985 on a new Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement beginning on July 1, 1985 and extending through June 30, 1988. Under the new agreement, specific limits are established for Categories 313, 314, 315, 317, 319, 320pt. (printcloth in T.S.U.S. items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80, and 98), 331, 334, 335, 336, 337, 338, 339, 340, 341, 347/348, 351, 369pt. (shop towels currently in T.S.U.S.A. number 336.2840 formerly in 336.2740), 445/446, 604pt. (acrylic spun yarn in T.S.U.S.A. number 310.5049), 613, 614, 631pt. (work gloves in T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 704.9000), 635, 638, 639, 640, 641, 645/646, 647 and 648, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1985 and extends through June 30, 1986. The agreement also establishes two group limits covering (1) all of the foregoing specific limit categories and (2) categories other than those subject to specific limits. The limits for Categories 336, 341, 641, and 648 include increases of five percent each to account for handmade cottage industry products made from handloomed fabrics of the cottage industry, or traditional folklore handicraft textile products. The limits have not been adjusted to account for any imports exported on and after July

1, 1985. As the data become available, such charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 31, 1985.

## **Committee for the Implementation of Textile Agreements**

Commissioner of Customs,  
Department of the Treasury,  
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985 between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 6, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1985 and extends through June 30, 1986, in excess of the restraint limits indicated:

Category	12-Month restraint limit <sup>1</sup>
313	16,000,000 square yards.
314	14,000,000 square yards.
315	15,900,000 square yards.
317	10,000,000 square yards of which not more than 2,100,000 square yards shall be in T.S.U.S. items 320.—through 331.—with statistical suffixes 50, 87 and 93.
319	5,260,000 square yards.
320pt. <sup>2</sup>	10,700,000 square yards.
331	400,000 dozen pairs.
334	26,000 dozen.
335	72,000 dozen.
336	68,250 dozen.
337	75,000 dozen.
338	275,000 dozen.
339	265,000 dozen.

Category	12-Month restraint limit <sup>1</sup>
340	370,000 dozen.
341	420,000 dozen.
347/348	700,000 dozen.
351	110,000 dozen.
369pt. <sup>3</sup>	900,000 pounds.
445/446	50,000 dozen.
604pt. <sup>4</sup>	700,000 pounds.
613	15,000,000 square yards.
614	15,000,000 square yards.
631pt. <sup>5</sup>	650,000 dozen pairs.
635	75,000 dozen.
638	300,000 dozen.
639	390,000 dozen.
640	330,000 dozen.
641	1,102,500 dozen.
645/646	350,000 dozen.
647	250,000 dozen.
648	1,260,000 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after June 30, 1985.

<sup>2</sup> In Category 320, only T.S.U.S. items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.—with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 80 and 98.

<sup>3</sup> In Category 369, only T.S.U.S.A. number 366.2840 (formerly 366.2740).

<sup>4</sup> In Category 604, only T.S.U.S.A. number 310.5049.

<sup>5</sup> In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 704.9000.

Also effective on November 6, 1985, a limit of 235,169,000 square yards equivalent shall be established for all of the foregoing categories, taken together as a group. Categories other than the foregoing, i.e., Categories 300-301, 400-444, 447-454, 459-469, 600-603, 604-0<sup>6</sup> 605, 310-312, 316, 318, 320-0<sup>7</sup>, 610-612, 625-627, 332-333, 342, 345, 349-350, 352-354, 359, 630, 631-0<sup>8</sup>, 632-634, 636-637, 642-644, 649-654, 659, 360-363, 369-0<sup>9</sup>, 665, 666, 669 and 670, shall be subject to a group limit of 49,831,000 square yards equivalent of which not more than 3,000,000 square yards equivalent shall be in wool textile products in Categories 400 through 469, with the exception of Category 445/446.

In carrying out this directive, entries of cotton, wool and man-made fiber textile products listed in the table above, which have been exported during previously established restraint periods which ended on June 30, 1985, shall to the extent of any unfilled balances, be charged against the restraint limits established for such goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

Textile products in Categories 313, 314, 336, 337, 351, 445/446, 613, 614pt.<sup>10</sup>, 635, 638, 641, and 647 which have been exported to the United States before July 1, 1985 shall not be subject to this directive.

Textile products in Categories 313, 314, 336, 337, 351, 445/446, 613, 614pt.<sup>11</sup>, 635, 638, 641.

<sup>6</sup> All T.S.U.S.A. in Category 604 except 310.5049.

<sup>7</sup> All T.S.U.S.A. in Category 320 except those listed in footnote 2, page 1.

<sup>8</sup> All T.S.U.S.A. in Category 631 except those listed in footnote 3 above.

<sup>9</sup> All T.S.U.S.A. in Category 369 except 366.2840 (formerly 366.2740).

<sup>10</sup> In Category 614, all T.S.U.S.A. numbers except 338.5051.

<sup>11</sup> In Category 614, all T.S.U.S.A. numbers except 338.5051.



and 647 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective day of this directive shall not be denied entry under this directive.

The limits set forth above are subject to adjustment in the future according to the provision of the bilateral agreement between the Governments of the United States and the Republic of Indonesia, which provide, in part, that specific limits may be increased by designated percentage, for swing, carryover and carryforward; and administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the bilateral agreement. Appropriate adjustments, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan.

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 85-26479 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DR-M

#### **Announcing an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Malaysia**

October 31, 1985.

On August 15, 1985, a notice was published in the Federal Register (50 FR 32882), announcing that, on July 30, 1985, the United States Government, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile of July 1 and 11, 1985, had requested the Government of Malaysia to enter into consultations concerning exports to the United States of cotton shop towels in Category 369pt., (only T.S.U.S.A. number 366.2840), produced or manufactured in Malaysia. On September 5, 1985 a further notice was published in the Federal Register (50 FR 36134) which corrected the levels for the ninety-day and prorated twelve-month periods.

Consultations have been held but agreement has not been reached on a

mutually satisfactory level for this category. The Government of the United States has decided, therefore, to control imports in Category 369pt. at the prorated specific limit of 142,721 pounds, exported during the period which began on October 28, 1985 and extends through December 31, 1985. In the event that imports in Category 369pt., exported during the ninety-day period which began on July 30, 1985 and extends through October 27, 1985 have exceeded the limit established for them during that period, they shall, if permitted to enter, be charged against the prorated limit.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 369pt., exported during the designated period, in excess of 142,721 pounds.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

October 31, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,  
Department of the Treasury,  
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Wool and Man-Made Fiber Textile Agreement of July 1, and 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on November 6, 1985, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in

Category 369pt.,<sup>1</sup> produced or manufactured in Malaysia and exported during the period which began on October 28 and extends through December 31, 1985, in excess of the 142,721 pounds.<sup>2</sup>

Merchandise in Category 369pt.<sup>1</sup> exported during the ninety-day period which began on July 30, 1985 and extended through October 27, 1985 which is in excess of the limit established for that period, shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan.

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 85-26480 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DR-M

#### **New Import Control Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan**

October 31, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, as issued the directive published below to the Commissioner of Customs to be effective on November 6, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

#### **Background**

On July 18, 1985 a notice was published in the Federal Register (50 FR 29248) announcing that, in June 1985, the American Institute in Taiwan (AIT), under the terms of the bilateral agreement of November 18, 1982, had

<sup>1</sup> In Category 369, only T.S.U.S.A. number 366.2840 (formerly 366.2740).

<sup>2</sup> The limit has not been adjusted to reflect any imports exported after July 29, 1985.



requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of, among other products, cotton underwear in Category 352, wool dresses in Category 436, and man-made fiber woven fabrics in Category 611, produced or manufactured in Taiwan.

Agreement has been reached in consultations held July 22-24, 1985 to establish limits of 855,021 dozen (Category 352), 4,350 dozen (Category 436) and 1,176,079 square yards (Category 611) for goods exported during 1985. In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the directive of December 21, 1984 to control imports in these categories at the agreed limits for the first time in 1985. The limits have not been adjusted to account for any imports exported during the agreement year which began on January 1, 1985 and extends through December 31, 1985. As the data become available, such changes will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

October 31, 1985.

#### Committee for the Implementation of Textile Agreements

Commissioner of Customs,  
Department of the Treasury,  
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported in 1985.

Effective on November 6, 1985, the directive of December 21, 1984 is hereby further amended to include the following limits for Categories 352, 436 and 611:

Category	12-Month limit <sup>1</sup>
352	855,021 dozen.
436	4,350 dozen.

Category	12-Month limit <sup>1</sup>
611	1,176,079 square yards.

<sup>1</sup> The limits have not been adjusted to reflect any imports exported after December 31, 1984. In Category 352 the charges for the period January 1 through July 31, 1985 have totaled 206,042 dozen; for Category 436, 392 dozen; and for Category 611, 405,249 square yards.

Textile products in Categories 352, 436 and 611 which have been exported to the United States before January 1, 1985 shall not be subject to this directive.

Textile products in Categories 352, 436 and 611 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 85-26481 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DR-M

#### Cancellation of Visa Waiver Procedure for Certain Cotton Fabric

November 1, 1985.

On February 1, 1985 a notice was published in the *Federal Register* (50 FR 4724), announcing, among other things, a procedure to waive the requirement, effective on January 1, 1985, that cotton fabrics, wholly or in chief value cotton, carded, containing yarn size before weaving of finer than 29, classified in T.S.U.S. provisions 320.—, through 331.— and provided statistically in item 34 would be required to be visaed as Category 313, instead of Category 320.

The purpose of this notice is to announce that the waiver procedure will be terminated, effective on January 1, 1986. Cotton textile products meeting the foregoing description and exported on and after January 1, 1985 will be required to be correctly visaed as Category 313.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 13397), June 28, 1984 (49 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5,

Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 85-26476 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DR-M

#### Requesting Public Comment on Bilateral Textile Consultations with Hong Kong Concerning Man-Made Fiber Luggage on Category 670 pt.; Correction

October 31, 1985.

On October 24, 1985 a notice was published in the *Federal Register* (50 FR 43265) announcing that the Government of the United States had requested the Government of Hong Kong to enter into consultations concerning exports to the United States of man-made fiber luggage in Category 670 pt. (only T.S.U.S.A. numbers 706.3420, 706.4144, and 706.4152). It further announced that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit of 6,341,557 pounds for the entry and withdrawals from warehouse for consumption in the United States of man-made fiber luggage in Category 670 pt. The limit specified should have been 6,426,119 pounds.

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 85-26477 Filed 11-5-85; 8:45 am]

BILLING CODE 3510-DR-M

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 15 November 1985 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.



Dated: November 1, 1985.  
 Linda M. Lawson,  
 Alternate OSD Federal Register Liaison,  
 Department of Defense.  
 [FR Doc. 85-26446 Filed 11-5-85; 8:45 am]  
 BILLING CODE 3810-01-M

## Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 20 and 21 November 1985  
 Time: 0830-1630

Place: Science Applications International Corporation McLean, Virginia 22102

Agenda: The Army Science Board Ad Hoc Subgroup for the Detection of Soviet Theater Nuclear Forces will meet for briefings by various government agencies and laboratories. This Meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Margaret Potter,  
 Administrative Staff, Army Science Board.  
 [FR Doc. 85-26410 Filed 11-5-85; 8:45 am]  
 BILLING CODE 3710-06-M

## DEPARTMENT OF EDUCATION

### National Advisory Council on Continuing Education; December Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: December 4-6, 1986.

ADDRESS: The Contemporary Resort Hotel, Walt Disney World, Orlando, Florida 32830.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on

Continuing Education, 2000 L Street, N.W., Suite 560, Washington, D.C. 20036. Telephone: (202) 634-6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs; and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The Council will meet from 9:00 a.m. to 5:00 p.m. on December 4, from 9:00 a.m. to 5:00 p.m. on December 5, and from 9:00 a.m. to 12:00 Noon on December 6, 1985.

A portion of the meeting of the Council will be closed on December 5 and December 6 one or more times to be determined by the Chairman for the purpose of interviewing candidates for the Executive Director position. The meetings will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. Appendix 2) and under exemption (8) contained in the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552b(c)(6)).

Discussion will include consideration of the qualifications and fitness of candidates and will touch upon matters which would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The proposed agenda includes:

- Visit to Disney World Training Facilities
- Legislative Update
- Executive Director Report
- Council/OECD Conference Follow-up
- Other Business

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, N.W., Suite 560, Washington, D.C.

Signed at Washington, D.C., on October 31, 1985.

William G. Shannon,  
 Executive Director.

[FR Doc. 85-26468 Filed 11-5-85; 8:45 am]  
 BILLING CODE 4000-01-M

### National Advisory Council on Continuing Education; November Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an Executive Committee meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: November 21-22, 1985.

ADDRESS: NACCE Conference Room, 2000 L Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 2000 L Street, N.W., Suite 500, Washington, D.C. 20036. Telephone: (202) 634-6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under Section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs; and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The Executive Committee will meet from 9:00 a.m. to 5:00 p.m. on November 21 and from 9:00 a.m. to 12:00 p.m. on November 22, 1985. A portion of the meeting will be closed on November 21



from 2:00 p.m. to 5:00 p.m., and on November 22 from 9:00 to 12:00 Noon, for the purpose of reviewing applications of candidates for the position of Executive Director. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. Appendix 2) and under exemption (6) contained in the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552(c)(6)).

The proposed agenda includes:

- OECD Conference Follow-up.
- Annual Report
- Council staff plans
- Other business

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, DC.

Signed at Washington, D.C., on October 31, 1985.

William G. Shannon,  
Executive Director.

[FR Doc. 85-26469 Filed 11-5-85; 8:45 am]

BILLING CODE 4000-01-M

## Office of Postsecondary Education

### National Graduate Fellows Program Application Notice for 1986

The National Graduate Fellows Program (NGFP) offers fellowships to students at accredited institutions of higher education to pursue graduate study at the doctoral level. Applications are invited for awards to be made in 1986.

Authority for this program is contained in Part C of Title IX of the Higher Education Act of 1965, as amended (20 U.S.C. 1134h-k).

Applications are invited for 12 month fellowship awards which are intended to be used during the 1986-87 academic year. The fellowship awards shall be renewable for a period not to exceed three additional years of study. The fellowship award period, which was 30 months for the Fiscal Year 1985 competition, has been modified for Fiscal Year 1986, because of anticipated Congressional action which will require the department to make 12 month awards. See HR 1210, "National Science, Engineering, and Mathematics Authorization Act of 1986," as amended and passed by the Senate (Sept. 26, 1985).

At a meeting held on September 27, 1985, the National Graduate Fellows Program Fellowship Board determined which disciplines within the arts, the

humanities, and the social sciences will be considered as eligible for fellowship awards under this program. The disciplines are contained in the NGFP program brochure. Those determinations are the statutorily-mandated responsibility of this Presidentially-appointed Fellowship Board (20 U.S.C. 1134i(a)(2)(B)).

**Closing Date for Transmittal of Applications:** An application for the NGFP must be hand-delivered or mailed by December 20, 1985.

**Applications Delivered by Mail:** An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.173, National Graduate Fellows Program, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail to insure that his or her application is received by the closing date. Each late applicant will be notified that his or her application will not be considered.

**Applications Delivered by Hand:** An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

**Eligible Applicants:** The program regulations (34 CFR 650.2) require that at the time of application, candidates for

NGFP fellowships must be eligible to begin or continue graduate study at the doctoral level at an accredited institution of higher education. Candidates must be citizens or nationals of the U.S.; be permanent residents of the U.S.; provide evidence from the Immigration and Naturalization Service that they are in the U.S. for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or be permanent residents of the Trust Territories of the Pacific Islands or Northern Mariana Islands. All applicants must meet any additional requirements established by the Fellowship Board. These requirements are included in the application package.

The Fellowship Board has determined that an individual is eligible for a NGFP fellowship if applying to, accepted, or already enrolled in a graduate program with the expressed intent of obtaining a doctorate or other doctoral level degree. According to the Fellowship Board, the NGFP is not intended to support students seeking Master's degrees, except where such a Master's degree is an integral preparatory step to a doctorate or other doctoral level degree.

**Available Funds:** Fiscal year 1986 funds have not yet been appropriated for this program. However, applications are invited to allow for sufficient time for the panels appointed by the NGFP Fellowship Board to evaluate them, and to complete the awards process prior to the end of the fiscal year, should the Congress appropriate funds for this program.

A fellowship award consists of (1) an annual allowance paid to the institution in which the fellow is enrolled, of \$6,000 or tuition and other expenses required by the institution as part of the fellow's instructional program, whichever is less, and (2) an annual stipend of \$10,000 or the amount of the fellow's financial need, whichever is less. See 4 CFR 650.5, 650.41, and 650.42.

**Application Forms:** Application forms will be available for mailing on November 13, 1985. They may be obtained by writing to the National Graduate Fellows Program, Office of Postsecondary Education, U.S. Department of Education, P.O. Box 44367, L'Enfant Plaza Station, Washington, D.C. 20026-4367.

The Secretary urges that applicants not submit information that is not requested.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. The application package is only intended to aid applicants in applying for assistance



under this competition. Nothing in the package is intended by the Department of Education to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition.

**Applicable Regulations:** The regulations applicable to this program include the following:

(a) The regulations governing the NGFP, 34 CFR Part 650, 50 Fed. Reg. 33220 (August 16, 1985).

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74 and 75, except for the following provisions in EDGAR 34 Part 75, which do not apply:

- (1) Subpart C—How to apply for a grant.
- (2) Subpart D—How grants are made.
- (3) Sections 75.580–75.592 of Subpart E—What conditions must be met by a grantee?

**Further Information:** For further information, contact the U.S. Department of Education, National Graduate Fellows Program, P.O. Box 44367, L'Enfant Plaza Station, Washington, D.C. 20026-4367, (202) 732-2945.

(20 U.S.C. 1134h-k).

(Catalog of Federal Domestic Assistance No. 84.173, National Graduate Fellows Program).

Dated: October 31, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-26470 Filed 11-5-85; 8:45 am]

BILLING CODE 4000-01-M

## ENDANGERED SPECIES COMMITTEE

### Notice of Exemption Application

**AGENCY:** Endangered Species Committee.

**ACTION:** Notice of Exemption Application.

**SUMMARY:** The Consolidated Grain and Barge Company of St. Louis, Missouri, has filed an application with the Secretary of the Interior seeking an exemption from section 7 of the Endangered Species Act for a barge fleeting area on the Ohio River near Mound City, Illinois.

**DATES:** The Secretary of the Interior must make threshold determinations concerning the application pursuant to 16 U.S.C. 1536(g) and 50 CFR 452.03 by November 17, 1985.

If the Secretary determines that the application qualifies for consideration by the Endangered Species Committee, the Committee must act by May 6, 1986.

**ADDRESS:** Correspondence to the Secretary or the Committee should be addressed c/o Ms. Barbara Abate, Room 6531, U.S. Department of the Interior, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Copies of the exemption application may be obtained from Ms. Barbara Abate, (202) 343-5216. Questions concerning the exemption process may be addressed to Mr. Jon H. Goldstein, (202) 343-7258.

**SUPPLEMENTARY INFORMATION:** On October 28, 1985, the Secretary of the Interior received the Consolidated Grain and Barge Company's application for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act (Act), 16 U.S.C. 1531 *et seq.* The proposed agency action for which the exemption is sought is the issuance of a permit under Section 10 of the Rivers and Harbors Appropriation Act of 1899 by the U.S. Army Corps of Engineers for the establishment of a barge fleeting area on the Ohio River, right bank, near Mound City, Pulaski County, Illinois.

After receipt of Consolidated's permit application, the Corps of Engineers consulted with the U.S. Fish and Wildlife Service, as required by section 7 of the Act, over the potential impact of the fleeting proposal on the orange-footed pearly mussel (*Plethobasis cooperianus*), a species listed as endangered on the U.S. List of Endangered and Threatened Wildlife and Plants. On April 3, 1985, the Service issued a biological opinion concluding, based on the presence of *P. cooperianus* in the portion of the mussel bed adjacent to the proposed fleeting site and the possible occurrence of *P. cooperianus* in the portion of the mussel bed within the proposed site, that barge fleeting as proposed between mile 970.3 and 971.4 of the Ohio River is likely to jeopardize the continued existence of *P. cooperianus*. On July 29, 1985, the Corps of Engineers denied the permit, finding that "the potential to adversely impact the *P. cooperianus* outweighs all other aspects of the proposal."

The exemption application describes the system by which the applicant would moor the barges, indicates that the applicant modified the proposal during the permitting process, and states that the applicant knows of no other permits that are required for its proposed action. The applicant also discusses certain alternatives to the proposed action that it considered, and provides other information intended to

fulfill the requirements of 50 CFR 451.02(e).

Donald Paul Hodel,

Chairman, Endangered Species Committee and Secretary of the Interior.

[FR Doc. 85-26693 Filed 11-5-85; 12:31 pm]

BILLING CODE 4310-10-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP85-300-002 et al.]

#### Natural Gas Certificate Filings; Colorado Interstate Gas Co.

Take notice that the following filings have been made with the Commission:

##### 1. Colorado Interstate Gas Company

[Docket No. CP85-300-002]

October 30, 1985.

Take notice that on October 4, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-300-002 a petition to amend the order issued June 20, 1985, in Docket No. CP85-300-200 pursuant to section 7(c) of the Natural Gas Act so as to authorize the addition of a delivery point to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

CIG states that pursuant to the June 20, 1985, order, CIG transports, on an interruptible basis, up to 3,185 Mcf of natural gas per day for Peoples. It is stated that the transportation agreement between the parties, dated February 11, 1985, provides for CIG to receive gas for People's account at a delivery point in Bent County, Colorado, and redeliver equivalent volumes to Peoples at one or more of four redelivery points in El Paso, Douglas, Cheyenne, and Lincoln Counties, Colorado.

CIG states that by amendatory agreement dated September 20, 1985, the proposed delivery point would be located at the existing interconnection of CIG's and Williston Basin Interstate Pipeline Company's (Williston) pipeline facilities in Park County, Wyoming. It is stated that Williston would deliver this released gas for People's account to CIG pursuant to the authorizations granted in Docket Nos. CP83-254-000 and CP83-335-000.

Comment date: November 20, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.



**Columbia Gas Transmission Corporation**

[Docket No. CP88-20-000]

**2. Columbia Gulf Transmission Company**

October 31, 1985.

Take notice that on October 8, 1985, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP88-20-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Continental Fibre Drum (Continental Fibre) under their certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to transport on a best-efforts basis up to 320 million Btu equivalent of natural gas per day pursuant to a transportation agreement dated August 16, 1985, among Applicants, Continental Fibre and West Ohio Gas Company (West Ohio), the distributor serving Continental Fibre. Applicants state the gas to be transported would be purchased by Continental Fibre from Entrade Corporation (Entrade) pursuant to a gas purchase agreement dated August 12, 1985, which provides that Entrade would sell up to a daily quantity of 320 million Btu equivalent of gas at a price of \$2.60 per million Btu which includes the cost of transportation into Columbia Gulf's system at Brath or Olla, Louisiana, or other points of interconnection with United Gas Pipe Line Company (United).

Columbia Gulf states it would charge one of the rates in its Rate Schedule T-2 of FERC's Gas Tariff, Original Volume No. 1, i.e., 14.28 cents per dt equivalent of gas for the transportation service from onshore Louisiana to Kentucky plus a retainage of 1.5 percent for company use and unaccounted-for losses.

Columbia Gas states that it would charge one of the rates in its Rate Schedule TS-1 of its Gas Tariff, Original Volume No. 1, for the transportation of Continental Fibre's gas from Kentucky to Van Wert, Ohio, as follows: gas received at Leach, Kentucky, and other delivery points 21.16 cents per dt and 29.93 cents per dt, respectively, provided the volumes are within the West Ohio's total daily entitlements (TDE). It is explained that for volumes in excess of the TDE, Columbia Gas would charge

for gas received at Leach, Kentucky, and other delivery points 32.50 cents per dt and 41.27 cents per dt, respectively. It is further explained that Columbia Gas would retain 2.43 percent of the gas transported for company use and unaccounted-for losses and would also charge 1.25 cents per dt for the Gas Research Institute general research and development funding fee.

Applicants also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: December 16, 1985, in accordance with Standard Paragraph C at the end of this notice.

**3. The Brooklyn Union Gas Company**

[Docket No. CP88-8-000]

October 30, 1985.

Take notice that on October 3, 1985, The Brooklyn Union Gas Company (Applicant), 195 Montague Street, Brooklyn, New York 11201, filed in Docket No. CP88-8-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.222(e) of the Commission's Regulations for a certificate of public convenience and necessity providing blanket authorization to transport, sell or assign natural gas, synthetic gas and liquefied natural gas (LNG), and perform storage-exchange services in interstate commerce as if Applicant were an intrastate pipeline subject to Subparts C, D, and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is submitted that Applicant was declared exempt from the Natural Gas Act and the Commission's Regulations thereunder pursuant to section 1(c) of the Natural Gas Act by order issued September 21, 1954, in Docket Nos. G-1171, *et al.* (13 FPC 1392), and in *Honeoye Storage Corporation* by letter order issued February 27, 1975, in Docket No. CP74-208 and Applicant's rates and tariff are regulated by the New York State Public Service Commission.

Applicant states that during the year ended June 30, 1985, it obtained

37,572,451 dt equivalent of gas from sources other than interstate supplies as defined in § 284.222(h)(2) of the Regulations. Applicant proposes to render sales services at ceiling rates reflecting cost factors currently on file with the New York Public Service Commission. Applicant also proposes to sell LNG at rates reflecting the costs incurred by Applicant for LNG purchased from Distrigas of Massachusetts Corporation (DOMAC) under DOMAC's FERC approved tariff. It is explained that for all the proposed services, Applicant would charge its ceiling rates. Applicant requests flexible authority to establish future negotiated rates not exceeding these ceiling rates as warranted by circumstances at the time specific sales or services are rendered. Applicant also requests abandonment authorization for all proposed sales and services.

Applicant states that the sales and services for which authorization is sought would not jeopardize its ability to meet long-term local service obligations, but would promote increased use of existing facilities, improve Applicant's operating load factors, and foster a more efficient, economic and dynamic interstate gas market.

Comment date: November 20, 1985, in accordance with Standard Paragraph F at the end of this notice.

**4. Pacific Interstate Transmission Company**

[Docket No. CP88-22-000]

October 30, 1985.

Take notice that on October 9, 1985, Pacific Interstate Transmission Company (PITCO), 720 West Eighth Street, Los Angeles, California 90017, filed in Docket No. CP88-22-000 a petition to amend the certificate issued April 2, 1976, in Docket No. CP76-104 pursuant to section 7(c) of the Natural Gas Act so as to change the name of the only customer served on its Southwest Division from Pacific Lighting Gas Supply Company to Southern California Gas Company, and for authorization to make conforming changes in its tariff sheets in its Original Tariff Volume 2, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

PITCO states that it has been informed that its customer, Pacific Lighting Gas Supply Company, would be merged into Southern California Gas Company on or about January 1, 1986, and that Southern California Gas Company would be the surviving corporation. PITCO has requested that the Amendment to its Certificate be



effective when it is informed by Southern California Gas Company that the merger is effective.

It is stated that the change in name of the customer would not modify any of the terms and conditions under which PITCO sells gas to such customer. It is further stated that the change in name is solely the product of a corporate reorganization of PITCO's customer. Additionally, it is explained, the customer's use of the gas would not change in as much as all gas purchased by Pacific Lighting Gas Supply Company was resold to Southern California Gas Company in any case.

Comment date: November 20, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

#### 5. United Gas Pipe Line Company

[Docket No. CP85-864-000]

October 30, 1985.

Take notice that on September 6, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-864-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation/exchange of natural gas for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), on a firm basis for a term not to exceed 10 years, all as more fully set forth in the application on file with the Commission and open to public inspection.

United states that Tennessee has proposed in Docket Nos. CP85-108-000 *et al.* to construct and operate a new offshore and onshore pipeline system which would consist of approximately 82 miles of 20-inch pipeline extending from an interconnection with Tennessee's mainline in Refugio County, Texas, to a platform in Mustang Island area Block 847, offshore Texas. United indicates that Tennessee intends to use the new pipeline to attach and transport new reserves it will purchase offshore.

United states that the onshore portion of Tennessee's proposed pipeline system would consist of approximately 30.2 miles of 20-inch pipeline at an estimated total cost of \$15,385,000. United further states that it has an existing pipeline located in the same vicinity as the onshore portion of Tennessee's proposed system which has substantial unused capacity.

Therefore, United states that as an alternative to Tennessee constructing the onshore portion of its proposal in Docket No. CP85-108-000 *et al.*, United proposes to utilize its existing 20-inch,

24-inch and 26-inch pipelines from near Aransas Pass, San Patricio County, Texas, to Refugio in Refugio County, Texas (known as United's Mustang Island line) to transport Tennessee's offshore gas reserves. To implement the proposed transportation service, United also proposes to construct approximately 1.27 miles of 30-inch pipeline from the terminus of Mustang Island line to Tennessee's mainline system near Refugio, Texas. United further proposes to replace approximately 936 feet of 20-inch pipeline and to hydrostatically test the entire Mustang Island line to uprate its maximum allowable operating pressure. By primarily utilizing existing facilities, United asserts that it can provide its proposed transportation service at a cost to Tennessee which is lower than the cost of Tennessee constructing onshore facilities as proposed in Docket Nos. CP85-108-000, *et al.*

For the proposed transportation service, United proposes to charge Tennessee its Rate Schedule T rate for Type I service under which the demand charge is currently \$0.57 per Mcf and the commodity charge is currently 5.22 cents per Mcf. United also proposes a demand quantity of 241,900 Mcf per day for the service which United asserts would be sufficient to accommodate the volumes of gas that Tennessee intends to transport from offshore. Contrasted with its proposed transportation rate, United asserts that the unit cost of the onshore portion of Tennessee's proposed system would exceed 14 cents per Mcf based on Tennessee's estimate of proven reserves.

Comment date: November 20, 1985, in accordance with Standard Paragraph F at the end of this notice.

#### 6. K N Energy, Inc.

[Docket No. CP86-4-000]

October 31, 1985.

Take notice that on October 2, 1985, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-4-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate four sales taps for delivery of gas to end-users for irrigation, commercial and domestic usages, under the certificates issued in Docket Nos. CP83-140-000, CP83-140-001 and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

The proposed sales taps are to be located along K N jurisdictional

pipelines in Phelps and Adams Counties, Nebraska, and Wallace and Wichita Counties, Kansas, and would provide for an estimated total annual volume of 1,640 Mcf, it is explained.

K N indicates that the natural gas delivered would be consumed from its general system supply and such volume would have no significant impact on K N's current deliveries. The gas delivered and sold by K N to the various end users would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction, it is stated.

Comment date: December 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

#### 7. Mid Louisiana Gas Company

[Docket No. CP86-36-000]

October 31, 1985.

Take notice that on October 15, 1985, Mid Louisiana Gas Company (Mid Louisiana), 300 Poydras Street, New Orleans, Louisiana 70130, filed in Docket No. CP86-36-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate facilities necessary to establish a new delivery point to serve an existing customer, Crown Zellerbach Corporation (Crown Zellerbach), under Mid Louisiana's certificate issued in Docket No. CP82-539-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Mid Louisiana states that Crown Zellerbach has requested it to establish a new delivery point at the interconnection of facilities owned by its affiliate, Creole Gas Pipeline Corporation, and Crown Zellerbach's St. Francisville, Louisiana plant located in West Feliciana Parish, Louisiana. It is further stated that such delivery point would permit the delivery of high pressure gas required by Crown Zellerbach for new cogeneration facilities it has installed and also allow Mid Louisiana to maintain its certificated level of service to Crown Zellerbach.

Mid Louisiana indicates that the maximum daily volume to be delivered at the proposed point would be 17,000 Mcf of gas per day. Mid Louisiana asserts that no increase or decrease is proposed in the total daily and annual volumes it is authorized to deliver to Crown Zellerbach. Mid Louisiana further asserts that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to



existing customers and that establishing the new point is not prohibited by its currently effective tariff.

Comment date: December 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

#### 8. Consolidated Gas Transmission Corporation

[Docket No. CP86-003-000]

October 31, 1985.

Take notice that on October 1, 1985, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-003-000 a request pursuant to § 157.205 of the Commission's Regulation (18 CFR 157.205) for authorization to construct and operate facilities necessary to add a new delivery point to New York State Electric and Gas Corporation (NYSEG), its existing jurisdictional customer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Consolidated proposes to add a new delivery point on NYSEG's existing 12-inch Main No. 603040, near the town of Hopewell, in Ontario County, New York, to be known as the Canandaigua connection. The new delivery point, it is indicated, would be adjacent to a delivery point to be established by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., to serve Consolidated, its existing jurisdictional customer. From the interconnection with Tennessee, Consolidated proposes to construct and operate the facilities necessary to redeliver the gas to NYSEG, including a connecting pipeline, pressure regulating facilities, and gas heating facilities. The estimated cost for all delivery facilities required would be \$350,000.

It is explained that NYSEG has agreed to reimburse Consolidated for the cost of constructing all associated facilities, up to \$350,000. It is stated that a maximum daily quantity of 10,000 dt equivalent of natural gas would be delivered to NYSEG at this point.

Consolidated indicates that NYSEG has requested the delivery point and additional sales quantities to meet the total current and future requirements of its customers in the vicinity of Canandaigua, New York, and that its requirements-type service to NYSEG, under Rate Schedule RQ of its FERC Gas Tariff, Original Volume No. 1, permits such an increase in deliveries. Consolidated asserts that NYSEG has advised it that the volumes it would purchase at the new delivery point would be used for its system supply, to

meet its market requirements in Canandaigua and the surrounding area.

Comment date: December 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

#### 9. Columbia Gulf Transmission Company

[Docket No. CP86-019-000]

October 31, 1985.

Take notice that on October 8, 1985, Columbia Gulf Transmission Company (Applicant), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP86-019-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Yorktowne Paper Mills, Inc. (Yorktowne), under the certificate issued in Docket No. CP83-496-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 900 million Btu of natural gas per peak day, less retainage, on behalf of Yorktowne for its plant in York, Pennsylvania, pursuant to a gas transportation agreement dated July 1, 1985. It is stated that Columbia Gas Transmission Corporation (Columbia Transmission) is also participating in this transportation agreement and has obtained authorization in Columbia Transmission Docket No. CP84-332-001 and is utilizing its flexible authority to add a receipt point from Applicant.

Applicant proposes to charge for its transportation service one of the rates set forth in Rate Schedule T-2 of its F.E.R.C. Gas Tariff, Original Volume No. 1. The current rates are said to be: offshore to Kentucky—23.92 cents per dt equivalent of natural gas per day and 1.69 percent retainage; lateral onshore to Kentucky—14.28 cents per dt equivalent of natural gas per day and 1.50 percent retainage; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of natural gas per day and 1.50 percent retainage; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of natural gas per day and 0.75 percent retainage.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the

application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Applicant indicates that Yorktowne is purchasing the gas from Exxon Corporation (Exxon). Applicant explains that the gas transportation agreement specifies the point of receipt by Applicant, the point of redelivery to Columbia Transmission, and a further point of redelivery to Columbia Gas of Pennsylvania, Inc., the distribution company serving Yorktowne. It is further explained that no gas was released by Applicant for sale by Exxon to Yorktowne.

Applicant further requests that continuation of transportation be allowed through the later of (1) any extension of the existing authority to transport under § 157.209 of the Commission regulations, (2) and/or such period of time as may be established by the Commission in any final rule issued in Docket No. RM85-1 or (3) up to the end of the term of the transportation agreement, which would be in effect for a term of one year and month to month thereafter subject to termination upon proper notice to the other parties at any time subsequent to the first anniversary of the agreement.

Comment date: December 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

#### 10. Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

[Docket No. CP86-23-000]

October 31, 1985.

Take notice that on October 9, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-23-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas for Bishop Pipeline Corporation (Bishop) on behalf of Kimberly Clark Corporation (Kimberly-Clark) and Conley Frog and Switch Company, Inc. (Conley Frog) (collectively called Kimberly-Clark, *et al.*), under its certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request on file with the Commission and open to public inspection.

Tennessee indicates it is filing the instant request for authorization under the prior notice procedure to continue the low priority transportation service beyond October 31, 1985, for as long as



permitted under applicable existing or future regulations.

It is stated that Tennessee proposes to transport natural gas for Bishop, on behalf of Kimberly-Clark, *et al.*, from reserves purchased by Bishop in Wharton County, Texas, and LaFourche Parish, Louisiana. Tennessee states that it has agreed to receive, on an interruptible basis, up to a total of 10,000 Mcf of gas per day at the various receipt points. Tennessee states that it would transport and deliver for the account of Kimberly-Clark, *et al.*, an equivalent quantity of gas at either an existing point of interconnection between the facilities of Tennessee and (1) Texas Gas Transmission Corporation (Texas Gas) at Tennessee's Meter No. 1-1034 in Acadia Parish, Louisiana, or (2) Columbia Gulf Transmission Company at Tennessee's meter No. 1-1034 in Acadia Parish, Louisiana. It is indicated that under separate agreements with Kimberly-Clark and/or Bishop, and Conley Frog and/or Bishop, Texas Gas would transport and deliver such volumes to Memphis Light, Gas and Water Division (Memphis Light). Memphis Light would then transport and deliver said respective volumes to Kimberly-Clark's Memphis Hill Plant located in Memphis, Tennessee, and to Conley Frog's plant located in Memphis, Tennessee.

In addition, Tennessee requests flexible authority to add and/or delete sources of supply and receipt points if such altered service is on behalf of the same end-user, at the same end-user location, and within the maximum daily and annual volumes authorized for the basic service. Within 30 days of the addition or deletion of any gas suppliers and/or receipt points, Tennessee indicates that it would file certain information in this docket, where applicable to the changes in service.

Tennessee states that it would charge the rate set forth in its Rate Schedule IFEU of 17.14 cents per Mcf. Also, Tennessee states that it would retain 2.21 percent of the volume received from the New Taiton field, Wharton County, Texas, and 0.9 percent of the total quantity of gas received from the Little Temple field and the Bully Camp field, both in LaFourche Parish, Louisiana, into its system for fuel and lost and unaccounted-for volumes. Further, the rates are exclusive of the Gas Research Institute surcharge.

Tennessee estimates the peak day, average day and annual volumes to Kimberly-Clark and Conley Frog as follows:

*Kimberly-Clark*  
Peak day: 4,000 Mcf

Average day: 3,250 Mcf  
Annual: 1,200,000 Mcf

#### *Conley Frog*

Peak day: 400 Mcf  
Average day: 270 Mcf  
Annual: 100,000 Mcf

Tennessee indicates that Kimberly-Clark requires gas for boiler fuel and paper machine drying at its Memphis Hill Plant in Memphis, Tennessee, and Conley Frog requires gas as fuel for its steel heating furnaces and for space heating at its plant, also in Memphis, Tennessee. Tennessee enclosed an affidavit from Kimberly-Clark indicating that the requested volumes would supply the total gas needs of the plant.

Tennessee has also submitted an affidavit from Memphis Light indicating it has sufficient capacity to transport the gas without detriment to its other customers.

Tennessee has also indicated that Tennessee constructed the hot taps necessary to connect the gas to its system at a cost of \$59,500 which would be reimbursed by Bishop.

Comment date: December 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

#### **Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public

convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

*Kenneth F. Plumb,*  
*Secretary.*

[FR Doc. 85-28503 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-11-000 *et al.*]

**Small power production and cogeneration facilities; qualifying status; certificate applications, etc.; University of San Francisco *et al.***

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

#### **1. University of San Francisco**

[Docket No. QF86-11-000]

October 23, 1985.

On October 7, 1985, University of San Francisco (Applicant), of 2299 Golden Gate Avenue, San Francisco, California 94117, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the campus of the University of San Francisco in San Francisco, California. It will consist of a reciprocating engine with a heat



recovery boiler. Heat will be recovered from the engine jacket and exhaust stack to produce steam for use by the University for space heating. The electric power production capacity of the facility will be 1.5 MW. The primary energy source will be natural gas. The installation of the facility will begin in mid 1986.

## 2. Novo Electric Systems Corporation

[Docket No. QF86-22-000]

October 23, 1985.

On October 10, 1985, Novo Electric Systems Corporation (Applicant), of 600 W. Lindsay Street, Stockton, California 95203, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the Yolo Bypass, south of CR 16, Yolo County, California. The facility will consist of three natural gas fired spark ignition reciprocating engines and necessary heat recovery system. Heat recovered from the engine cooling and exhaust systems will be used to process waste water from oil and gas operations in the immediate geographical area. The electric power production capacity of the facility will be 300 kW.

## 3. Harden Manufacturing Co.

[Docket No. QF85-741-000]

October 30, 1985.

On September 30, 1985, Harden Manufacturing Company (Applicant), of 312 W. Third Avenue, Gastonia, North Carolina 28052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The approximately 1,000 kilowatt hydroelectric facility is located in Gaston County, North Carolina.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

## 4. Hemet Unified School District

[Docket No. QF86-17-000]

October 30, 1985.

On October 9, 1985, Hemet Unified School District (Applicant), of 2350 W. Latham Avenue, Hemet, California 92343 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Hemet High School, 41701 Stetson Avenue, Hemet, California 92343. The facility will consist of a natural gas fueled reciprocating engine/generator. Heat recovered from engine exhaust gas and cooling jacket water be used for heating the school swimming pools. The electric power production capacity will be 100 kilowatts. The installation of the facility will begin in June 1986.

## 5. Northwestern Pacific Power Company

[Docket No. QF86-28-000]

October 30, 1985.

On October 11, 1985, Northwestern Pacific Power Company (Applicant), of Four Embarcadero Center, Suite 1980, San Francisco, California 94111 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 30 megawatt hydroelectric facility will be located near Taylorsville in Plumas County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

## 6. Northwest Power Company (Excelsior Ditch Diversion Dam)

[Docket No. QF86-27-000]

October 30, 1985.

On October 11, 1985, Northwest Power Company (Applicant), of Four Embarcadero Center, Suite 1980, San Francisco, California 94111 submitted for filing an application for certification

of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 14.0 megawatt hydroelectric facility will be located near Nevada City in Nevada County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

## 7. Northwest Power Company (Nevada County)

[Docket No. QF86-25-000]

October 30, 1985.

On October 11, 1985, Northwest Power Company (Applicant), of Four Embarcadero Center, Suite 1980, San Francisco, California 94111 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.5 megawatt hydroelectric facility will be located near Nevada City in Nevada County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

## 8. Northwest Power Company (Sierra County)

[Docket No. QF86-26-000]

October 30, 1985.

On October 11, 1985, Northwest Power Company (Applicant), of Four Embarcadero Center, Suite 1980, San Francisco, California 94111 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No



determination has been made that the submittal constitutes a complete filing.

The 5.0 megawatt hydroelectric facility will be located near Downieville in Sierra County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

#### 9. Northwest Power Company (Nevada County)

[Docket No. QF86-30-000]

October 30, 1985.

On October 11, 1985, Northwest Power Company (Applicant), of Four Embarcadero Center, Suite 1980, San Francisco, California 94111 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 5.0 megawatt hydroelectric facility will be located near Washington in Nevada County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

#### 10. Northwest Power Company (Yuba County)

[Docket No. QF86-29-000]

October 30, 1985.

On October 11, 1985, Northwest Power Company (Applicant), of Four Embarcadero Center, Suite 1980, San Francisco, California 94111 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 7.5 megawatt hydroelectric facility will be located near

Camptonville in Yuba County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

#### 11. Northwest Power Company (Nevada County)

[Docket No. QF86-24-000]

October 30, 1985.

On October 11, 1985, Northwest Power Company (Applicant), of Four Embarcadero Center, Suite 1980, San Francisco, California 94111 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 25.8 megawatt hydroelectric facility will be located near Washington in Nevada County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

#### 12. Ramada Inn

[Docket No. QF86-21-000]

October 30, 1985.

On October 11, 1985, Ramada Inn (Applicant), of 91 Bonita Road, Chula Vista, California 92010, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 91 Bonita Road, Chula Vista, California. The facility will consist of a reciprocating engine fueled by natural gas, and necessary heat recovery system. Heat recovered will be utilized in swimming

pool heating, space heating and pre-heating of domestic hot water. The electric power production capacity of the facility will be 60 kW.

#### 13. Weber-Box Elder Conservation District

[Docket No. QF86-45-000]

October 31, 1985.

On October 17, 1985, Weber-Box Elder Conservation District (Applicant), of 1483 Wall Avenue, Ogden, Utah 84404 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,800 kilowatt hydroelectric facility will be located in Weber County, Utah.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA as implemented by the Commission's regulations 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

#### 14. Placid Refining Company and Lummus Crest, Inc.

[Docket No. QF86-31-000]

October 31, 1985.

On October 15, 1985, Placid Refining Company, 3900 Thanksgiving Tower, Dallas, Texas 75201 and Lummus Crest, Inc., 3000 Post Oak Blvd., Houston, Texas 77227, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at the Placid Refining Company's Post Allen Refinery in West Baton Rouge Parish, Louisiana. The facility is a topping cycle cogeneration facility. This primary energy sources of the facility will process refinery gas and natural gas. The net electric power production capacity of the facility will be 11.3 megawatts. Construction of the facility is scheduled to begin in January of 1986.



**15. Passaic Valley Water Commission**

[Docket No. QF86-46-000]

October 31, 1985.

On October 18, 1985, Passaic Valley Water Commission (Applicant), of 1525 Main Avenue, Clifton, New Jersey 07011, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 13.4 megawatt hydroelectric facility will be located in Passaic County, New Jersey.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting construction, operation, licensing and pollution abatement.

**16. Freeport-McMoRan Inc. and Gunnison Capital, Ltd.**

[Docket No. QF86-23-000]

October 31, 1985.

On October 15, 1985, Freeport-McMoRan Inc., 1615 Poydras Street, New Orleans, Louisiana, 70161 and Gunnison Capital Ltd., 3050 Post Oak Blvd., Suite 1175, Houston, Texas 77056, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Santa Barbara County, California, approximately six miles southwest of Santa Maria. The facility is a bottoming cycle cogeneration plant. The thermal output will be the production of pozzolan from oil-impregnated diatomaceous earth. Waste heat will be used to produce steam to drive a turbine generator for the production of electricity. The primary energy source of the facility will be volatiles from the crude oil impregnated in the diatomaceous earth. The net electric power production capacity of the facility is 49.9 megawatts.

**17. Clinton Energy Limited Partnership**

[Docket No. QF86-48-000]

October 31, 1985.

On October 18, 1985, Clinton Energy Limited Partnership (Applicant), c/o Energy Initiatives, Inc. 95 Madison Avenue, Morristown, New Jersey 07960 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Clinton Holiday Inn, Route 173, Clinton, New Jersey 08809. The facility will consist of a natural-gas fired Caterpillar engine-generator set and associated heat recovery unit. Low pressure steam from the heat recovery unit will be used for the refrigeration and heating needs at the Holiday Inn. The electric power production capacity of the facility will be 325 kW. The primary energy source will be natural gas. Clinton Energy Limited Partnership includes Energy Initiatives, Inc. (EII) which has 40% partnership interest in the facility. EII is a wholly owned subsidiary of Jersey Central Power & Light Company, which is a member of the General Public Utility Corporation. The facility commenced its installation on August 15, 1985 with a scheduled start up date of November 15, 1985.

**18. American Recovery Systems**

[Docket No. QF86-32-000]

October 31, 1985.

On October 15, 1985, American Recovery Systems, 195 F.M. 949, Sealy, Texas 77474, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at 9223 Highway 225 at Miller Cutoff Road, LaPorte, Texas. The facility is a combined cycle-topping cycle cogeneration facility. It will consist of a combustion gas turbine, a waste heat recovery boiler and an extraction/condensing steam turbine generator set. Extraction steam will be used in an ammonia absorption refrigeration unit. The primary energy input to the facility will be natural gas. The net electric power production capacity of the facility is 51,857 kilowatts.

**19. Anderson-Tully Company**

[Docket No. QF86-42-000]

October 31, 1985.

On October 16, 1985, Anderson-Tully Company, (Applicant), of 1242 North Second Street, Memphis, Tennessee 38107, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility is located at the Applicant's address in Memphis, Tennessee. The facility will consist of a wood-fired boiler, and a back pressure steam turbine-generator. The exhaust steam is used in the plant-process to dry lumber. The electric power production capacity of the facility will be 260 kW. The primary energy source will be biomass in the form of kiln dried hardwood scrap. The installation of the facility is expected to begin on November 1, 1985. No electric utility or electric utility holding company will have any ownership interest in the facility.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26502 Filed 11-5-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. C184-556-005]

**Cenergy Exploration Co.; Application for Extension and Modification of Special Marketing Program and Request for Expedited Action**

November 1, 1985.

Take notice that on October 28, 1985, Cenergy Exploration Company



(hereinafter Applicant) filed an application pursuant to section 7 of the Natural Gas Act (NGA) and the provisions of 18 CFR Parts 157 and Rule 207 seeking an amendment of the certificate of public convenience and necessity authorizing Applicant's special marketing program to (1) extend the term thereof and (2) remove limitations on the customer eligibility criteria. Applicant requests an extension of the Cenergy SMP Program until October 31, 1986. The modification requested by Applicant is to remove the restrictions on eligibility criteria for purchases under the Cenergy SMP Program. In particular, Applicant requests expansion of the customer eligibility criteria to eliminate the limitation on access to any gas customers.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said applicant should on or before November 14, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26510 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-32-000, 001]

#### Colorado Interstate Gas Co.; Proposed Change in Rates Under Purchased Gas Adjustment Clause Provision

November 1, 1985.

Take notice that Colorado Interstate Gas Company (CIG), on October 25, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed changes would decrease the commodity rates under CIG's jurisdictional rate schedules

by 1.99 cents per Mcf. This filing reflects an annual decrease in purchased gas costs of approximately \$2.9 million.

The filing was made to enable CIG to reflect in its rates, pursuant to section 21 of CIG's FERC Gas Tariff, Original Volume No. 1, decreased purchased gas costs it will experience as the result of rate filings made by certain of its pipeline suppliers.

CIG requests that the instant filing be made effective on November 1, 1985.

Copies of the filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26511 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-217-003 and CP84-210-002]

#### Columbia Gas Transmission Corp. and Texas Eastern Transmission Corp.; Petition To Amend

November 1, 1985.

Take notice that on October 31, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252 (Petitioners), filed in Docket Nos. CP84-217-003 and CP84-210-002, respectively, a petition to amend further the Commission's order issued on April 12, 1984, in Docket Nos. CP84-217-000 and CP84-210-000, as amended February 8, 1985, in Docket Nos. CP84-217-002 and CP84-210-001, pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension of the transportation service presently being provided to Carnegie Natural Gas Company (Carnegie) from October 31,

1985, to October 31, 1986, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that Carnegie requested Petitioners to continue to transport up to 55,900 dt equivalent of natural gas per day for Carnegie. Carnegie would deliver the gas to Texas Eastern by displacement. Texas Eastern would receive the gas from Carnegie at Texas Eastern's M and R station Nos. 1275 and 008 in Greene County, Pennsylvania. Texas Eastern would then transport and redeliver the gas to Columbia for the account of Carnegie, at a point of interconnection between Texas Eastern and Columbia, M and R station No. 077, located in Fairfield County, Ohio. Columbia would then transport the gas to Columbia Gas of Ohio, Inc., which would in turn transport and deliver the gas to Carnegie at four M and R stations located in Lorain and Scioto Counties in Ohio. Carnegie would then deliver the gas to United States Steel Corporation.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 13, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26512 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-62-000]

#### Connecticut Light and Power Co.; Filing

November 1, 1985.

Take notice that on October 25, 1985 Connecticut Light and Power Company (CL&P) tendered for filing for itself and as successor by merger with the Hartford Electric Light Company (HELCO) Notices of Termination of the following Rate Schedules:



CL&P's Rate Schedule FERC No. 269  
 CL&P's Rate Schedule FERC No. 264  
 CL&P's Rate Schedule FERC No. 267  
 CL&P's Rate Schedule FERC No. 222  
 CL&P's Rate Schedule FERC No. 250  
 CL&P's Rate Schedule FERC No. 265

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
 Secretary.

[FR Doc. 85-26513 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-39-000]

#### The Connecticut Light and Power Co.; Filing

November 1, 1985.

Take notice that on October 21, 1985, the Connecticut Light and Power Company ("CL&P") tendered for filing proposed changes to the fuel adjustment clause in its FERC Electric Tariff Resale Service Rate W-2 pursuant to which it provides service to: Second Taxing District, City of Norwalk; Third Taxing District, City of Norwalk; and the Town of Wallingford. In addition, the Company filed proposed changes to the fuel adjustment clause in its FERC Electric Tariff Resale Service Rate F-2 pursuant to which it provides service to Bozrah Light and Power Company. In order to permit these changes to the fuel adjustment clauses in CL&P's wholesale tariffs, CL&P has also requested a waiver of the requirements of § 35.14 of the Commission's Regulations.

CL&P states that the revisions to the tariffs are being filed so that the fuel cost savings resulting from the generation of test energy by the Millstone Unit 3 nuclear generating unit, in which the Company has an ownership interest and which is expected to be producing test energy shortly after January 1, 1986, will be treated as a reduction in plant investment rather than as a reduction in fuel costs to be flowed through to

customers under the fuel adjustment clauses.

Copies of the filing were served upon the Company's jurisdictional customers and the Connecticut Department of Public Utility Control.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before November 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
 Secretary.

[FR Doc. 85-26514 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C186-36-000]

#### Consolidated Fuel Supply, Inc.; Filing

October 31, 1985.

Take notice that on October 25, 1985, Consolidated Fuel Supply, Inc. ("Consolidated") 888 South Greenville Avenue, Suite 100, Richardson, Texas, 75081, filed an application pursuant to sections 4 and 7 of the Natural Gas Act ("NGA"), 15 U.S.C. 717c, 717f, and provisions of 18 CFR Part 157, for a blanket certificate of public convenience and necessity authorizing Consolidated to engage in a spot sales marketing program hereinafter referred to as the Consolidated Fuel Program, and for interim authority pending consideration of the underlying permanent application, as fully set forth in the application on file with the Federal Energy Regulatory Commission ("Commission") and available for public inspection.

Approval of the application would: (1) Authorize sales of natural gas for resale in interstate commerce; (2) permit partial abandonment of certain natural gas sales; (3) confer pregranted abandonment authorization for sales of natural gas pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the Consolidated Fuel Program; and (5) confer pregranted abandonment authorization for the transportation service allowed under the

requested certificate. Consolidated also requests the Commission to declare that with respect to Consolidated and its activities, the Commission will only assert NGA jurisdiction over jurisdictional transactions not otherwise exempt from the NGA.

Consolidated proposes to sell natural gas qualifying for the sections 102, 103, 107 and 108 rates under the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. 3301 *et seq.* Only contractually committed gas will be sold under the Consolidated Fuel Program. Consolidated or participating producers will secure from the purchasers temporary releases of "surplus" gas in order to meet market demand for natural gas with spot sales. Releasing producers will be absolved from take-or-pay liability for any volumes of gas released and sold under the Consolidated Fuel Program. Transportation arrangements for the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make protest with reference to this application should on or before November 13, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless the Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at a hearing in this proceeding.

Kenneth F. Plumb,  
 Secretary.

[FR Doc. 85-26515 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES86-01-000 et al.]

#### Electric Rate and Corporate Regulation Filings: Consumer Power Co. et al.

October 30, 1985.

Take notice that the following filings have been made with the Commission:



**1. Consumer Power Company**

[Docket No. ES86-01-000]

Take notice that on October 15, 1985, Consumers Power Company filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue and sell, or guarantee, up to \$500,000,000 in secured and/or unsecured short-term debt including but not limited to, notes, drafts, debentures and commercial paper. The issuance of the notes, drafts, debentures and commercial paper would be issued from time to time, until and including December 31, 1986, with maturities of 364 days or less.

Comment date: November 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

**2. Iowa Electric Light and Power Company**

[Docket No. ES86-02-000]

Take notice that on October 16, 1985, the Iowa Electric Light and Power Company (Applicant), filed an application pursuant to section 204 of the Federal Power Act with the Federal Energy Regulatory Commission seeking authority to issue short-term notes in the aggregate principal amount of \$85,000,000. The short-term notes will be issued to commercial banks and/or commercial paper dealers as necessary and will have a term not in excess of one year with a final maturity date of not later than December 31, 1988.

Comment date: November 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

**3. Iowa Power and Light Company**

[Docket No. ES86-03-000]

Take notice that on October 16, 1985, Iowa Power and Light Company (Applicant) filed an application, pursuant to section 204 of the Federal Power Act, for authorization for authority to negotiate privately with the County of Louisa, Iowa, for the purpose of financing the Company's undivided interest in certain pollution control facilities at Louisa Power Station Unit 1 through the issuance of the County's Pollution Control Revenue Bonds ("Bonds"). A loan agreement between the County and the Applicant would commit the County to issue and sell to underwriters its Bonds in an aggregate principal amount equal to the cost of the Company's ownership interest in such facilities. The repayment obligation of the application would be evidenced by debt obligations bearing identical terms with, and pledged to support the payment of, such Bonds.

Comment date: November 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

**4. UtiliCorp United Inc.**

[Docket No. ES86-04-000]

Take notice that on October 21, 1985, UtiliCorp United Inc. (Applicant) filed an application with the Commission pursuant to section 204 of the Federal Power Act seeking authority to issue from time to time through December 31, 1988, short-term debt outstanding at any one time of no more than \$300,000,000 in the aggregate. All debt will have final maturities of not later than December 31, 1988.

Comment date: November 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26405 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP86-62-000]****El Paso Natural Gas Company; Notice of Application**

November 1, 1985.

Take notice that on October 22, 1985, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP86-62-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing El Paso to continue or implement certain specific arrangements for the transportation and delivery of natural gas in interstate commerce under section 7 of the Natural Gas Act, through and including June 30, 1986, with pregranted abandonment authorization, which transportation and

delivery arrangements have commenced or were contemplated to commence pursuant to the Commission's self-implementing Regulations and are scheduled to terminate on or after November 1, 1985, all as more fully set forth in the application on file with the Commission and open for public inspection.

El Paso states that on October 9, 1985, the Commission issued its Final Rule in Docket No. RM85-1-000. El Paso notes that with certain limited exceptions, any interstate pipeline which wishes to provide any sort of self-implementing transportation service for any third party after October 9, 1985, can do so only on the conditions (1) that it offer to provide nondiscriminatory access to its transportation capacity to all comers, and (2) that its customers be given the option to reduce or convert existing firm sales entitlements. El Paso further notes that a pipeline which wishes to avoid such conditions can do so either by refusing to transport other than under existing separately certificated or "grandfathered" self-implementing arrangements, or by agreeing to do so only under individual certificates granted on a case-by-case basis.

El Paso states that the existing and contemplated arrangements provide customers on El Paso's interstate pipeline access to low-priced spot market gas. It is further stated that the termination of such arrangements would have an adverse effect on those customers; indeed, in some cases, such arrangements may provide the only fuel source which is low enough in cost to permit customers to continue economic operation. In addition, it is indicated that termination of certain existing transportation services on behalf of intrastate and other interstate pipelines would adversely affect those pipelines and their respective suppliers and customers. El Paso explains that it seeks to avoid the adverse consequences that would follow from the termination of existing or contemplated arrangements: that its interstate customers continue to be afforded the opportunity to receive low-priced spot market gas, and that other pipelines, their suppliers and customers are not denied the benefits which they receive through transportation services provided by El Paso. However, at the same time, El Paso asserts that it is unable now to accept the non-discriminatory access and customer contract demand conversion/reduction option conditions until the full consequences of such conditions are much better defined and understood. Therefore, in order to continue after October 9, 1985, to



provide those existing and contemplated transportation services which are not already separately certificated or clearly "grandfathered." El Paso requests Section 7(c) authorization. It is indicated that the proposal covers transportation services for 17 low priority end users, 18 intrastate pipelines and local distribution companies, and 3 interstate pipelines. (See Appendix)

Effective November 1, 1985, or shortly thereafter, unless the requested authorization herein is expeditiously granted, El Paso states that it would be compelled to terminate a substantial number of transportation services. Such transportation services it is asserted were originally undertaken or were contemplated to be undertaken during the limited term of the authorization requested herein, pursuant to section 311 of the Natural Gas Policy Act of 1978 or under El Paso's existing blanket certificate authorizing service in accordance with the existing Order No. 319, Order No. 234 and Subpart G of Part 284 programs. El Paso, therefore, requests specific authorization under

sections 7(c) and 7(b) of the Natural Gas Act to continue or implement those transportation services through June 30, 1986, by which time it is expected that the current uncertainties would have been resolved.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

#### APPENDIX.—EL PASO NATURAL GAS COMPANY PROPOSED TRANSPORTATION SERVICES

##### PART 157, SUBPART F—SECTION 157.209(e)

Shipper	Contract date	Docket No./commenced	Identity <sup>1</sup>	Rates		Maximum quantity (Mcf/d)
				Dollars/dth <sup>2</sup>	Code <sup>3</sup>	
1. Apache Powder Company	04-01-85	ST85-1188 06-02-85	TEU-1	\$ .1717 .0589	Mainline—AZ San Juan Triangle Commodity	* 2,000
2. Arizona Public Service Company	10-01-85	ST 10-01-85	T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	3,000
3. ASARCO, Inc.	04-01-85	ST85-1163 06-01-85	TEU-1	.1520 .1717 .0589	Mainline—TX Mainline—AZ San Juan Triangle Commodity	** 15,000
4. CAN-AM Corporation, Paul Lime Division	04-01-85	ST85-1143 05-24-85	TEU-1	.1717 .0589	Mainline—AZ San Juan Triangle Commodity	* 5,500
5. CAN-AM Corporation, Paul Lime Division	07-06-85	ST85-1475 07-06-85	TEU-1	.1717	Mainline—AZ	3,000
6. Chino Mines Company	04-01-85	ST85-1187 05-30-85	TEU-1	.1552 .0589	Mainline—NM San Juan Triangle Commodity	** 14,000
7. El Paso Electric Company	10-01-85	ST 10-01-85	T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	1,500
8. El Paso Gas Marketing Co. on Behalf of Border Steel Rolling Mills	06-06-85	ST 08-06-85	T-2	.2072 .0589	Displacement—Parted Rate San Juan Triangle Commodity	3,000
9. Giant Industries, Inc.	10-02-85	ST 10-02-85	T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	500
10. Inspiration Consolidated Copper Company	04-01-85	ST85-1229 05-26-85	TEU-1	.1717 .0589	Mainline—AZ San Juan Triangle Commodity	** 6,000
11. KENNECOTT	04-01-85	ST	TEU-1	.1717 .0589 .1717	Mainline—AZ San Juan Triangle Commodity Mainline—AZ	** 2,500
12. Magma Copper Company	04-01-85	ST85-1079 05-06-85	TEU-1	.1717	Mainline—AZ	* 10,000
13. Magma Copper Company	09-13-85	ST 9-13-85	T-1	.1717	Mainline—AZ San Juan Triangle Commodity	* 5,000
14. Phelps Dodge Corporation	04-01-85	ST85-1078 05-06-85	TEU-1	.1717 .1552	Mainline—AZ Mainline—NM	* 25,000
15. Public Service Company of New Mexico	06-07-85	ST 09-18-85	TEU-1	.0397 .0589	Short Haul San Juan Triangle Commodity	40,000
16. Salt River Agricultural Improvement Power District	10-01-85	ST 10-01-85	T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	50,000
17. Santa Fe Gas Marketing on Behalf of Tucson Electric Power Company	09-13-85	ST 09-13-85	T-1	.1717 .0589	Mainline—AZ San Juan Triangle Commodity	30,000

<sup>1</sup> Identifies the rate schedule contained in El Paso's FERC Gas Tariff, Original Volume No. 1-A applicable to the Transportation Service Agreement (TSA), which TSA will be filed pursuant to Part 154 of the Commission's Regulations.

<sup>2</sup> Rates effective July 1, 1985, Docket No. RP85-58.

<sup>3</sup> Identifies the type of charge for transportation service performed by El Paso.

<sup>4</sup> Volumes shown are inclusive of high priority requirements which may be otherwise "grandfathered" under Order 319 arrangements.

<sup>5</sup> Maximum volumes through May 15, 1986. From May 16, 1986 through March 31, 1988 the maximum volumes are one-half of the above stated volumes.

<sup>6</sup> Maximum volumes through May 15, 1986. From May 16, 1986 through March 31, 1988 the maximum volumes are 5,000 Mcf per day.



## PART 284, SUBPART B—SECTION 284.101

Shipper	Contract date	Docket No./commenced	Identity <sup>1</sup>	Rates		Maximum quantity (Mcf/d)
				Dollars/dth <sup>2</sup>	Code <sup>3</sup>	
1. El Paso Gas Marketing Co. on Behalf of Black Mountain Gas Company, Citizens Utilities Company, the City of Deming, New Mexico, the City of Socorro, New Mexico, EMW Gas Association, Rio Grande Natural Gas Association and the Town of Benson, Arizona.	10-03-85	ST 10-03-85	TSA/T-2	\$4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	3,150
2. Gas Company of New Mexico	10-02-85	ST 10-02-85	TSA/T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	9,000
3. Gas Company of New Mexico	12-20-79	ST 02-27-80	SPR	.1552 .0717 .0397 .2296 .1452 .0075	Mainline—NM Back Haul—NM Short Haul Field Gathering Processing Dehydration Only	50,000
4. Las Cruces, City of	10-02-85	ST 10-02-85	TSA/T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	2,500
5. Llano, Inc.	11-17-83	ST84-724 03-14-84	SPR	.0397 .1452	Short Haul Processing	750
6. Lordsburg, City of	10-03-85	10-03-85	TSA/T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	300
7. Mesa, City of	10-01-85	10-01-85	TSA/T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	3,000
8. Navajo Tribal Utility Authority	10-03-85	ST 10-03-85	TSA/T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	2,000
9. Pacific Gas and Electric Company	08-12-85	ST85-1710 08-12-85	TSA/T-1, T-2	.1775 .2072	Mainline—CA Displacement—Parted Rate	150,000
10. Pacific Lighting Gas Supply Company	07-31-85	ST85-1650 08-01-85	TSA/T-2	.2072 .0589	Displacement—Parted Rate San Juan Triangle Commodity	700,000
11. Petrolina Gas Pipeline Company	08-07-85	ST 10-18-85	TSA/T-1	.0397 .1529 .07055	Short Haul Mainline—TX Back Haul—TX	20,000
12. Santa Fe Gas Marketing, Acting as Agent for Cascade Natural Gas Corporation	08-13-85	ST 08-13-85	TSA/T-1	.0589 .0279	San Juan Triangle Commodity Short Haul	15,000
13. Southern Union Gas Company	10-01-85	ST 10-01-85	TSA/T-2	.2072 .0589	Displacement—Parted Rate San Juan Triangle Commodity	20,000
14. Southern Union Gas Company	09-17-85	ST 10-05-85	TSA/T-1, T-2	.07055 .2072	Back Haul—TX Displacement—One-Part Rate	9,000
15. Southwest Gas Corporation	09-01-85	ST 09-01-85	TSA/T-2	.2072 .0589	Displacement—Parted Rate San Juan Triangle Commodity	*
16. Westar Transmission Company	01-15-85	ST85-1554 07-17-85	SPR	.07055 .0397	Back Haul—TX Short Haul	20,000
17. Westar Transmission Company	10-02-85	ST 10-02-85	TSA/T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	2,000
18. Willcox, City of	10-03-85	ST 10-03-85	TSA/T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	600

<sup>1</sup> Identifies the type agreement (i) Transportation Service Agreement (TSA) and the applicable rate schedule contained in El Paso's FERC Gas Tariff, Original Volume No. 1-A or (ii) special rate schedule (SPR) to be contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2. Such agreements will be filed pursuant to Part 154 of the Commission's Regulations.

<sup>2</sup> Rates effective July 1, 1985, Docket No. RP85-58.

<sup>3</sup> Identifies the type of charge for transportation service performed by El Paso.

\* The maximum quantities per day for the months of September and October are 62,000 and 72,000, respectively.

## PART 284, SUBPART G—SECTION 284.221

[Docket No. CP85-127]

Shipper	Contract date	Docket No./commenced	Identity <sup>1</sup>	Rates		Maximum quantity (Mcf/d)
				Dollars/dth <sup>2</sup>	Code <sup>3</sup>	
1. Southwest Gas Corporation	06-13-85	ST85-1709 06-13-85	TSA/T-1	\$0279	Short Haul Less GRI	25,000
2. Transwestern Pipeline Company	01-02-85	ST 10-18-85	SPR	.2296 .0397	Field Gathering Short Haul	500
3. Western Gas Interstate Company	10-01-85	ST 10-01-85	TSA/T-2	.4365 .0589	Displacement—One-Part Rate San Juan Triangle Commodity	450

<sup>1</sup> Identifies the type agreement (i) Transportation Service Agreement (TSA) and the applicable rate schedule contained in El Paso's FERC Gas Tariff, Original Volume No. 1-A or (ii) special rate schedule (SPR) to be contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2. Such agreements will be filed pursuant to Part 154 of the Commission's Regulations.

<sup>2</sup> Rates effective July 1, 1985, Docket No. RP85-58.

<sup>3</sup> Identifies the type of charge for the transportation service performed by El Paso.

[FR Doc. 85-26516 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-515-004 and ER85-515-005]

### Florida Power and Light Co.; Order Granting Rehearing in Part, Denying Rehearing in Part, and Establishing Hearing Procedures

Issued: October 31, 1985.

On August 14, 1985, Seminole Electric Cooperative, Inc. (Seminole) and certain

Florida Cities (Cities)<sup>1</sup> filed in Docket Nos. ER85-515-004 and ER85-515-005, respectively, requests for rehearing of the Commission's order issued in this proceeding on July 15, 1985. 32 FERC

<sup>1</sup> Cities include Gainesville, Starke, Kissimmee, St. Cloud, Lakeland and Vero Beach, Florida; Gainesville Regional Utilities; the Sebring Utilities Commission; the Orlando Utilities Commission; and the Fort Pierce Utilities Authority.



¶61,059. In that order, the Commission accepted for filing, without suspension or hearing, to become effective May 1, 1985, Florida Power and Light Company's (FP&L) revised daily capacity charges for short-term interchange service under FP&L's interchange agreements with Seminole and the Cities.<sup>2</sup> The Commission also granted FP&L's request for waiver of the notice requirements and terminated the dockets.<sup>3</sup>

On rehearing, Cities request that the Commission suspend FP&L's filing for one day, to become effective subject to refund, and initiate a hearing on the issue of the appropriate return on equity. In support, Cities contend that: (1) The Commission's inclusion of transmission fixed costs in its analysis of the rates is contrary to the service contracts and therefore violates the *Mobile-Sierra*<sup>4</sup> doctrine, (2) the order failed to provide a reasoned basis for attributing transmission fixed costs to these interchange services, and (3) the Commission erroneously failed to establish a just and reasonable return on equity. Absent suspension and the imposition of a refund obligation, Cities request that the Commission establish expedited hearing procedures.

Seminole also renews its initial requests for: (1) A one day suspension and refund obligation, (2) consolidation of this proceeding with the proceeding in Docket No. ER85-380-000 (concerning rates for transmission services), and (3) summary disposition on the issue of return on equity. In support of its request for suspension and a refund obligation, Seminole states that: (1) The order of July 15, 1985, is based on an erroneous finding that Seminole had not alleged that FP&L's rate level is unreasonable, (2) Seminole already compensates FP&L for transmission fixed costs under a 1984 Amended Transmission Agreement, (3) transmission fixed cost charges are not properly includible in evaluating these interchange rates, and (4) the finding in the order that the rates will not yield excessive revenues is a mere assertion without record support. Finally, Seminole contends that FP&L's filing was made in the context of a formula

rate and, therefore, may be suspended, notwithstanding that the charges would be decreased.<sup>5</sup>

#### Discussion

The contention that the Commission erred in determining that FP&L's charges are not a formula rate and that the revised charges may not be subject to refund is not correct. While FP&L's daily capacity charge may be set by reference to a formula, the actual rate itself is not a formula but a fixed charge. Further, as we noted in the order of July 15, 1985, the annual revision to the charge has not operated as an automatic adjustment clause, but has been subject to the filing and notice requirements of section 205 of the Federal Power Act. Therefore, we again reject the argument that FP&L's filing involves a formula rate.

Cities' contention that our evaluation of FP&L's rates violates the *Mobile-Sierra* doctrine is also incorrect. That doctrine holds that a rate filing made in violation of contractual obligations is invalid. It does not establish any standard by which the Commission must evaluate the justness and reasonableness of rate filings. Thus, while FP&L may be bound to develop a rate for interchange services by reference to certain cost components, the Commission is not barred, in assessing the reasonableness of the price, from considering other variables pertinent to the service at issue.

With respect to the allegations that the Commission improperly "allocated" transmission fixed costs to the Service Schedule B rates and failed to adequately quantify its determination that the inclusion of those costs results in rates that will not yield excessive revenues, we also find intervenors' arguments unpersuasive.

In *Fort Pierce Utilities Authority v. FERC*, 730 F.2d 778 (D.C. Circuit 1984), the intervenors argued that it was improper to allocate any fixed costs to certain wheeling services provided by FP&L because FP&L could decline to provide the services if it did not anticipate having enough transmission capacity to wheel interchange power to customers who purchase such power from a different utility. They contended that provision of the wheeling services did not require FP&L to plan, construct, or maintain any additional transmission capacity. The Commission reversed the finding in the initial decision that the services should be regarded as firm.<sup>6</sup>

<sup>5</sup> Generally, "rate increases" can be made subject to refund under section 215 of the Federal Power Act.

<sup>6</sup> 21 FERC at 61,245.

However, the Commission found that while the offer to provide services was not firm, the "services do in a sense become firm once they are undertaken."<sup>7</sup> The Commission therefore permitted FP&L to include fixed costs in developing the rates. The court disagreed that the services were fairly characterized as firm and indicated that the services might not contribute to FP&L's peak load or require FP&L to incur a planning or construction function to meet additional capacity. Thus, the court found that the Commission's decision appeared to contradict the prior Commission orders in *Kentucky Utilities Company*, 15 FERC ¶ 61,002 (1981), *reh. denied* 15 FERC ¶ 61,222 (1981). In *Kentucky Utilities*, the Commission discussed the general principle that in developing rates, fixed costs should not be allocated to services that do not cause the utility to plan, construct, or maintain capacity. The court concluded that the Commission had not adequately explained any distinction between the rates at issue in *Fort Pierce* and the rates at issue in *Kentucky Utilities* (where the Commission did not allocate fixed costs) both of which were for interruptible transmission service. As a result, it remanded the proceeding for further consideration and a fuller explanation.

The proceeding in *Fort Pierce* was subsequently settled by the parties. Thus, the Commission did not have an opportunity to reconsider or to expand upon its reasoning with respect to pricing of coordination services.

The services at issue in the instance docket do not cause the utility to plan or construct new capacity. The services are offered only when existing capacity, constructed to meet native load, is temporarily available. These transactions are commonly known as coordination services or opportunity sales. Applying the general rule enunciated in *Kentucky Utilities*, it would not be appropriate to allocate any fixed costs in developing the rates.

However, if FP&L (or another utility) was limited to recovering only the variable costs of providing coordination services, it would have been little, if any, incentive to provide the service since the recovery of only incremental costs provides no benefit to the supplier's native load. To provide that incentive, the Commission allows utilities to price coordination sales at a rate which includes, in addition to variable costs, a contribution to the

<sup>7</sup> *Id.*

<sup>2</sup> Cities are all served under Service Schedule B. Seminole takes service under Service Schedule B and, for purchases only of short-term interchange power for the purpose of obtaining replacement power and energy, Service Schedule B-S.

<sup>3</sup> On September 13, 1985, the Commission issued an order granting rehearing for the purpose of further consideration. That order erroneously referred to the requests for rehearing as subdockets -003 and -004 of ER85-515.

<sup>4</sup> *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).



utility's fixed costs.\* That is not to say that fixed costs properly allocated to native load customers will be permitted to be allocated again to coordination services. The contribution provided by coordination sales to fixed costs is not an allocation of fixed costs to the service.

The Commission will generally permit rates for coordination services to recover, in addition to variable costs, an amount up to the contribution to fixed costs that would have been made by requirements customers using the same facilities. As a benchmark, this permits the Commission to compare the same or other services offered by the utility or by other sellers to determine the reasonableness of the rate. Such pricing provides an incentive for utilities to use temporarily idled capacity (while avoiding any overrecovery of costs) because the contribution to fixed costs derived from the sale benefits the native load customers in the form of revenue credits.

Thus, in evaluating FP&L's rates for coordination service under Service Schedule B, we do not, as alleged by Cities, allocate fixed costs to the service. Rather, we have evaluated the rates in light of the policy that some contribution to fixed costs by coordination customers is appropriate. FP&L must use both its production and transmission facilities when it sells under Service Schedule B and, therefore, the contribution is evaluated against both production and transmission investment. Since the rates paid by firm requirements customers provide the company with a 100 percent contribution to capital costs, this is an appropriate benchmark for comparison. Here, the proposed rates produce a contribution of less than 100 percent of the fixed production and transmission costs. Thus, proposed rates are below the benchmark and produce an earned return below that advocated by Seminole and Cities.

Nonetheless, intervenors argue on rehearing that the rate level for Service Schedule B is excessive. Because we shall set the Service Schedule B-S rates for hearing in any event, as discussed below, we shall also set the Service Schedule B rates for hearing. The issue is whether the filed rate, which is within a zone delineated by the contribution to fixed costs made by the seller's requirements customers at the top, and by no contribution to fixed costs (i.e. a

rate restricted to the seller's variable costs) at the bottom, is unjust and unreasonable.

With regard to the Schedule B-S rates, Seminole has raised on rehearing an argument not raised in its intervention. Seminole points out that Service Schedule B-S excludes all transmission costs in recognition of the fact that Seminole compensates FP&L for transmission costs related to Service Schedule B-S under a different rate schedule.<sup>9</sup> Thus, evaluation of the rates under Service Schedule B-S should consider production investment costs only. Upon further consideration, we conclude that Seminole is correct that evaluation of the Service Schedule B-S rates without reference to transmission fixed costs is appropriate, given the existence of a specific, concurrent rate schedule under which Seminole contributes to the transmission fixed costs that we attributed to Service Schedule B-S.

Our review of FP&L's submittal with respect to Service Schedule B-S, using only production investment, indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall set these rates for hearing. Inasmuch as FP&L's proposed rate represents a decrease from the existing level, any change in rate shall become effective on a prospective basis. For the same reason, any change in the Service Schedule B rates shall also be prospective. With regard to Cities' request for expedited hearing procedures, we believe that matters of scheduling are best left in this case to the discretion of the presiding administrative law judge.

Seminole has presented no arguments with respect to its request for summary disposition of the return on equity issue that was not previously considered and rejected in the order of July 15, 1985. With regard to consolidation, the above discussion makes it apparent that these rates raise different issues than the transmission rates at issue in Docket No. ER85-380-000. Thus, rehearing on these issues is denied. In all other respects, Seminole and Cities have made no arguments which were not previously considered and rejected in the order of July 15, 1985. Thus, in all other respects, rehearing will be denied.

#### The Commission Orders

(A) Except as indicated above, Cities' and Seminole's requests for rehearing are hereby denied.

\* The "1984 Amended Transmission Agreement."

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 4029a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of FP&L's Service Schedule B and B-S rates.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's rules of practice and procedure.

(D) Docket No. ER85-515-004 and ER85-515-005 are hereby terminated. A new Docket No. ER85-515-006 is hereby initiated in which the above mentioned hearing will be held.

(E) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26517-Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8568-001 et al.]

#### Surrender of Preliminary Permits; Independence Electric Corp. et al.

October 31, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

#### 1. Independence Electric Corporation

[Project No. 8568-001]

Take notice that Independence Electric Corporation, Permittee for the proposed Lock and Dam No. 12 Hydro Project No. 8568, has requested that its preliminary permit be terminated. The permit was issued on May 22, 1985, and would have expired April 30, 1987. The project would have been located on the Kentucky River near Irvine, Estill

\* We recently explained this in our Notice of Inquiry, Regulation of Electricity Sales for Resale and Transmission Service [Notice of Inquiry], Docket No. RM85-17-000 (Phase I), 50 FR 23,445 at 23,446 June 4, 1985.



County, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on October 11, 1985.

## 2. Independence Electric Corporation

[Project No. 8566-001]

Take notice that Independence Electric Corporation, Permittee for the proposed Lock and Dam No. 9 Hydro Project No. 8566, has requested that its preliminary permit be terminated. The permit was issued on May 8, 1985, and would have expired April 30, 1987. The project would have been located on the Kentucky River near Valley View, Madison County, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on October 11, 1985.

## 3. Independence Electric Corporation

[Project No. 8567-001]

Take notice that Independence Electric Corporation, Permittee for the proposed Lock and Dam No. 10 Hydro Project No. 8567, has requested that its preliminary permit be terminated. The permit was issued on May 22, 1985, and would have expired April 30, 1987. The project would have been located on the Kentucky River near Winchester, Clark County, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on October 11, 1985.

## 4. Mega Renewables

[Project No. 8518-001]

Take notice that Mega Renewables, Permittee for the proposed Hamilton Branch Project No. 8518, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 11, 1984, and would have expired on May 31, 1986. The project would have been located on Hamilton Branch, near Westwood, in Lassen County, California.

The Permittee filed the request on September 9, 1985.

## Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided

for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26408 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-401-002]

## Jersey Central Power & Light Co.; Notice of Compliance Filing

November 1, 1985.

Take notice that on October 21, 1985 Jersey Central Power and Light Company tendered for filing, in accordance with the Commission's order of September 18, 1985, a report on amounts refunded under ER85-401-000. Schedule 1 is a summary of refunds including interest. Schedule 2 details the monthly billing determinants and revenues under prior, present and settlement rates. Schedule 3 details the monthly revenue refunds and associated interest.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26518 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-17-000]

## Kansas Power and Light Co.; Notice of Amended Filing

November 1, 1985.

Take notice that on October 24, 1985 Kansas Power and Light Company (KP&L) tendered for filing six copies of Schedule WSM-12/83 intended to amend the contract KP&L filed on October 7, 1985 between it and the City of Chapman.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington,

DC 20426 in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26519 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3195-012]

## Joseph M. Keating; Appeal Rejection

November 1, 1985.

On September 13, 1985, the Acting Director, Office of Hydropower Licensing, granted an extension of time to start construction for the Sayles Flat Project No. 3195. 32 FERC ¶ 62,583 (1985). On October 16, 1985, June Carver appealed this grant of an extension of time.

Under the Commission's Rules of Practice and Procedure, 18 CFR 385.1902 (1985), an aggrieved party may appeal staff action within 30 days of that action. An entity becomes a party to a proceeding upon the filing, and subsequent granting, of a motion to intervene. See 18 CFR 385.214 (1985).

June Carver has not filed a motion to intervene in this proceeding, and, therefore, is not a party. Moreover, her appeal was not filed within the 30-day limit. Accordingly, the petition for appeal filed by June Carver is rejected.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26520 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-6-000]

## Mountain Fuel Resources, Inc.; Proposed Change in FERC Gas Tariff

November 1, 1985.

Take notice that Mountain Fuel Resources, Inc. (MFR) on October 29, 1985, tendered for filing and acceptance Second Substitute Original Sheet No. 8 to its FERC Gas Tariff, Original Volume No. 3.

MFR's filing is made pursuant to 18 CFR 154.63 and 154.209(d)(1)(i) and in response to a letter order issued July 15, 1985, by the Director of the Office of



Pipeline and Producer Regulations (OPPR) in Docket Nos. ST85-710-000, ST85-972-000 and ST85-1159-000.

MFR proposes to revise its Statement of Rates to clarify that its Temporary Transportation Charge is applicable to service performed on behalf of end users pursuant to 18 CFR 157.209, intrastate pipelines and local distribution companies pursuant to subpart B of Part 284, 18 CFR 284.102, and transportation on behalf of interstate pipelines pursuant to subpart G of Part 284, 18 CFR 284.221.

MFR has requested waiver of the Commission's regulations to allow an effective date of July 1, 1984.

MFR has served a copy of this filing upon its jurisdictional customers and the Wyoming and Utah Public Service Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26521 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-86-000]

**Pennsylvania Power & Light Co.; Filing**

October 31, 1985.

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on October 30, 1985, pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.12, an unexecuted Transmission Service Agreement (Agreement) dated October 28, 1985 between the Company and Westwood Energy Properties Limited Partnership (WEP). The Agreement sets forth the terms and conditions under which PP&L will transmit electric energy from WEP's waste-fired generating facility in Frailey Township, Pennsylvania to Metropolitan

Edison Company. PP&L requests an effective date for the Agreement as the date upon which the Commission accepts the Agreement for filing.

Copies of PP&L's filing have been served upon WEP and the Pennsylvania Public Utility Commission.

Any persons desiring to be heard or protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26406 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST85-1524-000]

**Producer's Gas Co.; Application for Approval of Rates and Charges for Performing NGPA Section 311 Services**

November 1, 1985.

Take notice that on August 13, 1985, Producer's Gas Company (Producer's), an Oklahoma intrastate pipeline, filed for approval of rates and charges for sales and transportation services through its so-called Anadarko System. The filing was made pursuant to § 284.123(b)(2) of the Commission's regulations, which provides for the determination of fair and equitable rates for service authorized under section 311 of the Natural Gas Policy Act. Producer's requested approval of maximum system-wide rates of 25.2 cents per MMBtu for service on the Anadarko System, effective August 13, 1985.

On October 11, 1985, Producer's filed an amendment to its application for approval of rates and charges. In the amendment, Producer's states that its August 13, 1985 application for approval

of rates on the Anadarko System applies to the following ongoing NGPA section 311 transactions:

Service For	Docket No.
El Paso Natural Gas Co.	ST81-106-000, ST81-106-001.
Southern Natural Gas Co.	ST82-193-000, ST82-193-001, ST82-193-002.
Panhandle Eastern Pipeline Co.	ST82-194-000, ST82-194-001, ST82-194-002.
Tennessee Gas Pipeline Co.	ST83-327-000, ST83-327-001.
Northwest Pipeline Corp.	ST84-524-000, ST84-524-001.
Transwestern Pipeline Co.	ST82-195-000, ST82-195-001, ST82-195-002.
ANR Pipeline Co.	ST83-141-000, ST83-141-001.
Southern Natural Gas Co.	ST83-441-000, ST83-441-001.
Washington Gas Light	ST83-634-000, ST83-634-001.
Mississippi River Transmission	ST84-165-000.
Entex, Inc.	ST84-219-000.
THC Pipe Line Co.	ST84-728-000.
Michigan Consolidated Gas Co.	ST85-70-000.
Michigan Consolidated Gas Co.	ST85-1116-000.
Connecticut Natural Gas Corp.	ST85-1221-000.
Dayton Power & Light Co.	ST85-1224-000.
Concinnati Gas & Electric Co.	ST85-1607-000.
Pacific Light & Gas Supply Co.	ST85-1608-000.
Northern Indiana Public Service Co.	ST85-1982-000.
Florida Gas Transmission Co.	ST83-429-000.
Florida Gas Transmission Co.	ST83-634-000.
Arcadium Gas Pipe Line Systems.	ST84-101-000.
Arcadium Gas Pipe Line Systems.	ST83-481-000.
Natural Gas Pipeline Co.	ST84-1138-000.
National Fuel Supply Co.	ST85-815-000.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26522 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. C186-35-000]

**Texican Natural Gas Co.; Application of Texican Natural Gas Company for Blanket Certificate of Public Convenience and Necessity, for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment, and for Expedited Consideration**

October 31, 1985.

Take notice that on October 25, 1985, Texican Natural Gas Company (Texican) filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), provisions of 18 CFR Parts 154, 157 and 284, and Rule 801 of the Commission's Rules of Practice and Procedure seeking a blanket certificate of public convenience and necessity authorizing: (1) Sales for resale of natural gas in interstate commerce by producers to Texican and by reseller/agents who may purchase such gas from Texican for resale under this proposed program; (2) sales for resale of natural gas in interstate commerce by producers, with Texican acting as their marketing agent; (3) blanket partial abandonment and pre-granted abandonment of certain sales of natural gas; (4) transportation of natural gas under Section 7(c) of the NGA and the Commission's regulations promulgated thereunder; and (5) pre-granted abandonment of such transportation, all as more fully-described in the Application which is on file with the Commission and open for public inspection. The Applicant also requests that said application be processed on an expedited basis so that the requested authorization is approved at the earliest possible date and, to that end, waives its right to a hearing pursuant to the "shortened procedures" addressed at 18 CFR 385.801.

Texican states that the certificate and abandonment authority sought in the Application, if granted, will enable Texican: To purchase natural gas subject to the Commission's NGA authority for which the maximum lawful price is higher than that established under Section 109 of the Natural Gas Policy Act; to resell such gas to any purchaser on a short-term basis for use or resale by that purchaser; to act as a agent rather than purchaser, in sales by producers for resale of such natural gas; and to have such gas, as well as gas which is no longer within the Commission's NGA sales authority, transported on a nondiscriminatory basis in interstate commerce on a short-term, spot-market basis, to any willing and able purchaser, including firm sales customers of interstate pipelines.

Texican states that the requested authority is necessary, notwithstanding Order No. 436,<sup>1</sup> because, *inter alia*, the blanket transportation authority offered in Order No. 436 is not mandatory and it appears that at least some interstate pipelines will decline to accept the Order No. 436 certificate. Order No. 436 does not provide for pre-granted sales and abandonment authority covering regulated categories of gas, such as NGPA section 102(d) gas; and, in any event, the requested authority is consistent with the Commission's goals set forth in Order No. 436 because the Application requests elimination of the supply, market and transportation restrictions previously imposed on special marketing programs.

Texican state that if pipelines do not accept the Order No. 436 certificate, substantial volumes of gas will be unable to move in the interstate market on and after November 1, 1985. Texican states that, without the requested authority, it is likely that many consumers will not be able to purchase competitively-priced natural gas during the winter heating period because of a lack of sufficient transportation authority. Therefore, Texican states that the granting of the Application will be in the public interest and public convenience and necessity.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said Application should, on or before November 13, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing must file a motion to intervene in accordance with Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for the Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26523 Filed 11-5-85; 8:45 a.m.]

BILLING CODE 6717-01-M

[Project No. 4154-002]

**Three City Mississippi River Hydropower Agency; Rejecting Late-Filed Appeal**

November 1, 1985.

In a letter dated August 29, 1985, the Director, Office of Hydropower Licensing (Director), dismissed the application for license of the Three City Mississippi River Hydropower Agency (Three City) for Project No. 4154. The Director's additional information required pursuant to § 4.32(f) of the Commission's regulations, 18 CFR 4.32(f) (1985). Three City has appealed the Director's dismissal and has requested that the application be reinstated.

Pursuant to Rule 1902 of the Commission's Rules of Practice and Procedure, 18 CFR 385.1902 (1985), staff action may be appealed to the Commission within 30 days of that action. Under this rule, an appeal would have to be filed by September 30, 1985. See 18 CFR 385.2007 (1985). Three City's appeal was filed on October 3, 1985, and is therefore untimely.

Three City has neither filed a motion for extension of time, See 18 CFR 385.2008 (1985), nor has it provided any explanation for its late filing. Accordingly, notice is hereby given that the appeal of Three City filed on October 3, 1985, is rejected.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26524 Filed 11-5-85; 8:45 am]

BILLING CODE 6717-01-M

**Transcontinental Gas Pipe Line Corp.; Informal Settlement Conference**

[Docket Nos. CP85-190-000, CP85-264-000 and CP85-294-000]

November 1, 1985.

Take notice that on November 19, 1985, at 10:00 a.m., an informal settlement conference will be convened to discuss the possibilities of settlement in the above-captioned case. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

All interested parties and Commission Staff are invited to attend; however, attendance at the conference will not

<sup>1</sup> Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, No. RM85-1-000 (issued October 9, 1985).



confer party status. Any person wishing to become a party to these proceedings must file a motion to intervene in accordance with Rule 213(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

Take further notice that on November 19, 1985, at 2:00 p.m., a formal prehearing conference shall be convened before Presiding Administrative Law Judge Bruce L. Birchman for the purpose of establishing a procedural schedule in the consolidated proceedings.

For further information contact Demetrios G. Pulas, Jr., or Edward LeDuc, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-5758 or 357-8615.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26525 Filed 11-5-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket Nos. CP83-437-003 and G-1628-001]

#### United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 30, 1985.

Take notice that on October 24, 1985, United Gas Pipe Line Company (United) has filed revised service agreements between United and the Utility Board of the Town of Citronelle, Alabama (Citronelle) and between United and the Okaloosa County (Florida) Gas District (Okaloosa) to permit Citronelle and Okaloosa the option of purchasing supplies of natural gas from other suppliers, notwithstanding their obligation under the service agreements to purchase their full requirements from United up to the authorized maximum daily quantities (MDO).

It is indicated that the presently authorized MDO for Citronelle is 6,999 Mcf and that under the terms of the revised service agreement, Citronelle would be permitted to purchase up to 478 Mcf of gas per day from other suppliers for a two-year period. It is further indicated that the presently authorized MDO for Okaloosa is 30,991 Mcf and that under the terms of the revised service agreement, Okaloosa would be permitted to purchase up to 1,633 Mcf of gas per day from other suppliers for a two-year period. United states that it would provide transportation services for Citronelle and Okaloosa under certain circumstances under Section 311 of the Natural Gas Policy Act. United avers that it is still obligated to provide

service to Citronelle and Okaloosa to the extent that Citronelle and Okaloosa do not choose to exercise the option to purchase gas from other suppliers.

United asserts that the revised service agreements stem from and are consistent with the settlement of complaints brought before the Commission by certain similarly-situated full requirements customers of United. It is stated that complaints were filed against United by the City of Pensacola, Florida, in Docket Nos. G-232 and CP83-336; by the Utilities Board of the City of Bay Minette, Alabama, in Docket No. RP83-103; by the City of Brewton, Alabama, in Docket No. CP83-379; and by the City of Fairhope, Alabama, in Docket No. RP83-110. It is indicated that these complaints were substantially identical in that each of the complainants was a municipal utility full requirements customer of United that sought to eliminate or modify the obligation to purchase its full requirements from United so that it might obtain supplemental supplies of natural gas. United states that during the course of negotiations to resolve the issues raised by the complainants, it became clear that other similarly-situated municipal full requirements customers were interested in this matter and were prepared to file complaints similar to those of the four complainants, if necessary. Accordingly, United agreed to make available to Citronelle and Okaloosa settlements on the same terms as those it offered the customers that had filed complaints, it is stated. When a final settlement was reached in the on-the-record proceedings, each of the complainants filed a stipulation and agreement with the Commission containing provisions for limited waiver of the complainant's obligation to purchase its full requirements from United and a notice of withdrawal of the complaint, it is asserted. It is further asserted that the Commission issued a Notice Of Termination of the proceedings on March 7, 1985. United avers that because Citronelle and Okaloosa had not filed complaints themselves, they were not covered by the procedures. United further avers that the filings for Citronelle and Okaloosa are not only consistent with, but actually a part of the resolution of the complaints filed by Pensacola and the other municipalities.

United states that its service obligations to the municipalities are not changed as a result of the settlement and the service agreements tendered for filing. United avers that each of the municipalities is given the option under defined circumstances to purchase a portion of its requirements from other

suppliers; however, United remains obligated to provide service to Citronelle and Okaloosa to the extent that these municipalities do not choose to exercise their respective options to purchase gas from other suppliers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26526 Filed 11-5-85; 8:45 am]  
BILLING CODE 6717-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51592; FRL-2811-2]

#### Certain Chemicals Premanufacture Notices

##### Correction

In FR Doc. 85-24400, beginning on page 41580 in the issue of Friday, October 11, 1985, make the following corrections:

1. On page 41580, second column, under the heading **DATES**:
  - a. In the fourth line of premanufacture notices, remove "and 85-1523".
  - b. In the sixth line, "85-3" should read "86-3".
  - c. In the seventh line, "81-10" should read "86-10".
2. On page 41580, third column, **P 85-1518**, third line, "polyester" should read "polyester".
3. On page 41581:
  - a. In the first column, **P 85-1523**, third line, "polyester" should read "polyester".
  - b. In the third column, **P 86-7**, fifth line, "propanediol" should read "propanediol".

BILLING CODE 1505-01-M



[OPTS-51593; FRL-2914-1]

**Certain Chemicals Premanufacture Notices****Correction**

In FR Doc. 85-25126, beginning on page 42773 in the issue of Tuesday, October 22, 1985, make the following corrections:

On page 42773, second column, in P 86-23, first line, "Velsico" should read "Velsicol".

BILLING CODE 1505-01-M

[OPTS-42011B; TSH-FRL 2886-6]

**2-Chlorotoluene; Decision Not To Test****Correction**

In FR Doc. 85-23624, beginning on page 40445 in the issue of Thursday, October 3, 1985, make the following corrections:

1. On page 40446, second column, under the heading *A. Manufacture and Use*, third line, "15.2° C" should read "159.2° C".

2. On page 40447, third column, second complete paragraph, second line, "LC<sub>50</sub>" should read "LC<sub>50</sub>".

BILLING CODE 1505-01-M

[OPP-66125; FRL-2913-9]

**Intent to Cancel Registrations of Pesticide Products Containing Carbon Tetrachloride, Carbon Disulfide, and Ethylen Dichloride****Correction**

In FR Doc. 85-15123 beginning on page 42997 in the issue of Wednesday, October 23, 1985, make the following correction:

On page 42998, in the table, under the heading of "Product name", eighteen lines from the bottom, "Bisulphine" should read "Bisulphide".

BILLING CODE 1505-01-M

[PF-423, PH-FRL 2919-2]

**Pesticide Tolerance Petitions**

**AGENCY:** Environmental Protective Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received pesticide petitions relating to the establishment and/or withdrawal of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

**ADDRESS:** By mail, submit comments identified by the document control number [PF-423] and the petition

number, attention Product Manager (PM-15), at the following address.

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

George LaRocca (PM-15), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2400).

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide (PP), and feed additive (FAP) petitions relating to the establishment and/or withdrawal of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

**I. Initial Filing**

PP 6F3309. Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Sommerville, NJ 08876. Proposes amending 40 CFR 180.422 by establishing a tolerance for the combined residues of the insecticide, (1R,3S)3[(1'RS)(1',2',2',2'-tetrabromoethyl)-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester and its metabolites, (S)-alpha-cyano-3-phenoxybenzyl (1R,3R)-cis,trans-2,2-dimethyl-3-(2,2-dibromovinyl) cyclopropanecarboxylate calculated as parent, in or on the commodity soybeans at 0.02 part per million (ppm)

(negligible). The proposed analytical method for determining residues is gas chromatography.

**II. Petition Withdrawal**

PP 3F2825 & FAP 3H5386. EPA issued a notice published in the Federal Register of April 13, 1983 (48 FR 15951) which announced that FMC Corp., 2000 Market St., Philadelphia, PA 19103 had submitted pesticide petition (PP) 3F2825 and feed additive petition (FAP) 3H5386 to the Agency proposing to amend 40 Part 180 (PP 3F2825) and 21 CFR Part 561 (FAP 3H5386) by establishing tolerances for residues of the insecticide (±) cyano (3-phenoxyphenyl)methyl (±) cis/trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in or on the commodities as follows:

Petition ID	CFR affected	Commodities	Parts per million (ppm)
PP 3F2825 FAP 3H5386	40 CFR Part 180 21 CFR Part 561	Tomatoes Tomato pomace dry	0.6 35.0

FMC has withdrawn this petition without prejudice to future filing in accordance with 40 CFR 180.8.

Authority: 21 U.S.C. 346a.

Dated: October 21, 1985.

Douglas D. Camp.

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-26449 Filed 11-5-85; 8:45 am]

BILLING CODE 8560-50-M

[PP 4G2979/T500; PH-FRL #2919-1]

**American Cyanamid Co.; Renewal of Temporary Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has renewed a temporary tolerance for residues of the herbicide AC 252,214, 2-[4, 5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-quinolinecarboxylic acid in or on the raw agricultural commodity soybeans.

**DATE:** This temporary tolerance expires September 18, 1986.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.



Office location and telephone number:  
Rm. 245, CM  $\pm$  2, 1921 Jefferson Davis  
Highway, Arlington, VA, (703-557-  
1800).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice published in the Federal Register of July 18, 1984 (49 FR 29132) stating that a temporary tolerance had been extended for residues of the herbicide AC 252, 214, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-quinolinecarboxylic acid in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

This tolerance was renewed in response to pesticide petition PP 4C2979, submitted by American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540.

The company has requested a 1-year renewal of the temporary tolerance to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 241-EUP-108, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires September 18, 1986. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or

scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerance or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: October 21, 1985.

**Douglas D. Camp,**

*Director, Registration Division, Office of Pesticide Programs.*

(FR Doc. 85-26448 Filed 11-5-85; 8:45 am)

BILLING CODE 5590-50-M

[PP 5G3203/T501; FRL-2919-9]

#### **Nor-Am Chemical Co.; Establishment of Temporary Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established a temporary tolerance for residues of the insecticide 3,6-bis (2-chlorophenyl) 1,2,4,5-tetrazine in or on the raw agricultural commodity strawberries. This temporary tolerance was requested by Nor-Am Chemical Co.

**DATE:** This temporary tolerance expires October 1, 1986.

**FOR FURTHER INFORMATION CONTACT:**  
By mail:

Jay Ellenberger, Product Manager (PM)  
12, Registration Division (TS-767C),  
Office of Pesticide Programs,  
Environmental Protection Agency, 401  
M St., SW., Washington, DC 20460.

Office location and telephone number:  
Rm. 202, CM #2, 1921 Jefferson Davis  
Highway, Arlington, VA, (703-557-  
2386).

**SUPPLEMENTARY INFORMATION:** Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, has requested in pesticide petition PP 5G3203 the establishment of a temporary tolerance for residues of the insecticide 3,6-bis (2-chlorophenyl) 1,2,4,5-tetrazine in or on the raw agricultural commodity strawberries at 3.0 parts per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 45639-EUP-29, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires October 1, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 246a(j).



Dated: October 30, 1985.

Douglas D. Campt,  
Director, Registration Division, Office of  
Pesticide Programs.

[FR Doc. 85-26451 Filed 11-5-85; 8:45 am]  
BILLING CODE 6560-50-M

[PF-424; PH-FRL-2918-9]

# PPG Industries Inc., et al.; Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** EPA has received pesticide petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

**ADDRESS:** By mail, submit comments identified by the document control number [PF-424] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C),  
Program Management and Support  
Division, Office of Pesticide Programs,  
Environmental Protection Agency, 401  
M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Information Services Section (TS-  
757C), Rm. 236, CM #2, 1921 Jefferson  
Davis Highway, Arlington, VA 22202.

Information submitted as a comment  
concerning this notice may be claimed  
confidential by marking any part or all  
of that information as "Confidential  
Business Information" (CBI).

Information so marked will not be  
disclosed except in accordance with  
procedures set forth in 40 CFR Part 2. A  
copy of the comment that does not  
contain CBI must be submitted for  
inclusion in the public record.

Information not marked confidential  
may be disclosed publicly by EPA  
without prior notice. All written  
comments filed in response to this  
notice will be available for public  
inspection in the Information Services  
Section office at the address given  
above, from 8 a.m. to 4 p.m., Monday  
through Friday, except legal holidays.

## FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-  
767C), Attn: (Product Manager (PM)  
named in each petition),  
Environmental Protection Agency,  
Office of Pesticide Programs, 401 M  
St., SW., Washington, D.C. 20460.

In person: Contact the PM named in  
each petition at the following office  
location/telephone number:

Product manager	Office location/telephone number	Address
PM-21, Henry Jacoby	Rm. 227, CM #2 (703-557-1900)	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202 Do.
PM-23, Richard Mountfort	Rm. 247, CM #2 (703-557-1830)	

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions (PP) relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

## I. Initial Filings

1. *PP 5F3299.* PPG Industries Inc., One PPG Place, Pittsburgh, PA 15272.

Proposes amending 40 CFR Part 180 by establishing a tolerance for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate in or on the commodity soybeans at 0.01 parts per million (ppm). The proposed analytical method for determining residues is electron capture gas chromatography. (PM-23)

2. *PP 6F3305.* Rhone-Poulenc Inc., Agrochemical Division, P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.399 by establishing a tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylcarboxamide), and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the commodity broccoli at 25 ppm. The proposed analytical method for determining residues is gas-liquid chromatography using a <sup>63</sup>Ni electron capture detector. (PM-21)

## II. Amended Petitions

1. *PP 5F3241.* EPA issued a notice published in the *Federal Register* of May 29, 1985 (50 FR 21935) which announced that Rhone-Poulenc Inc. proposed amending 40 CFR 180.399 by establishing a tolerance for the combined residues of the fungicide iprodione and its metabolite in or on the commodity almond hulls at 2.0 ppm.

Rhone-Poulenc has amended the petition by adding the commodity almonds, nutmeat at 0.3 ppm. The proposed analytical method for determining residues is gas-liquid chromatography using a <sup>63</sup>Ni electron capture detector. (PM-21)

2. *PP 4F3069.* ICI Americas Inc., Concord Pike & New Murphy Rd., Wilmington, DE 19897. EPA issued a notice published in the *Federal Register* of May 23, 1984 (49 FR 21796) which announced that ICI Americas Inc. proposed amending 40 CFR 180.411 by

establishing tolerances for the residues of the herbicide fluazifopbutyl (±)-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoic acid (fluazifop), both free and conjugated, and of (±)-butyl 2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the commodity carrots at 0.2 ppm.

ICI Americas Inc. has amended the petition by increasing the tolerance level in or on carrots from 0.2 ppm to 2.0 ppm. The proposed analytical method for determining residues is high pressure liquid chromatography (HPLC). (PM-23)

Authority: 21 U.S.C. 346a.

Dated: October 23, 1985.

Douglas D. Campt,  
Director, Registration Division, Office of  
Pesticide Programs.

[FR Doc. 85-26447 Filed 11-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42078; TSH-FRL #2904-1]

## Sodium N-Methyl-N-Oleoyltaurine; Decision Not To Test

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** This notice is EPA's response to the Interagency Testing Committee's (ITC) recommendation that EPA consider requiring health-effects testing of sodium N-methyl-N-oleoyltaurine (SMOT, CAS No. 137-20-2) under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not initiating a rulemaking at this time under section 4(a) of TSCA to require health or environmental effects testing of SMOT. EPA's analysis of available data indicates that few people are exposed to this chemical, exposure levels are low, and only small amounts of this chemical are released to the environment. Existing information on health effects does not suggest potential for an unreasonable risk at expected exposure levels.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll Free:



(800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

**SUPPLEMENTARY INFORMATION:** EPA is not initiating a rulemaking under section 4(a) of TSCA to require testing of SMOT for the reasons presented below.

## I. Background

### A. ITC Recommendation

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated SMOT for priority consideration in its 15th Report, published in the Federal Register of November 29, 1984 [49 FR 46931]. This notice constitutes EPA's response to the ITC designation of SMOT. The ITC recommended that SMOT be considered for a staged health effects testing program consisting of short-term genotoxicity, sensitization in appropriate test systems, and chronic toxicity/oncogenicity (conditional upon the results of the short-term tests). The basis of these recommendations was as follows: production of 300,000 to 3.1 million pounds per year, potential for worker exposure in the textile and pesticide formulation industries, and potential for consumer exposure via the compound's use in products such as household detergents, rug shampoos, laundry soaps and surface coatings. The ITC concluded that there was a lack of sufficient data to characterize the effects of concern for SMOT. No environmental effects tests were recommended by the ITC because several studies of SMOT or SMOT analogs indicated rapid degradation, including one in which SMOT was found to be degraded by 75 percent in Chesapeake Bay water within 1-4 days (Ref. 1).

### B. Regulatory Development

Under section 4(a)(1) of TSCA, EPA shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under sections 4(a)(1)(A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1)(A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 46 FR 30300 and 48524 and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

In evaluating the ITC's testing recommendations for SMOT, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of SMOT under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies

submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) on SMOT; published and unpublished data available to the Agency.

## II. Review of Available Data

### A. Physical Characteristics

SMOT (CAS No. 137-20-2) is an anionic surfactant produced in the form of a fine white powder with a sweet odor (Ref. 2). Its estimated melting point is 76.5°C, estimated boiling point is 387°C, estimated vapor pressure is  $14.45 \times 10^{-3}$  mm Hg, estimated solubility in water is 9.2 mg/L, calculated log K(OW) is 4.29, and calculated log K(OC) is 4.08 (Ref. 3).

### B. Production

An industry estimate of 1983 production of SMOT is approximately 1.2 million pounds (Ref. 4), while the U.S. International Trade Commission (USITC) reported the 1983 production volume for a group of taurine-derived anionic surfactants to be 2.277 million pounds (Ref. 5). The taurine derivatives included were SMOT; *N*-(coconut oil acyl)-*N*-methyltaurine, sodium salt; *N*-cyclohexyl-*N*-palmitoyltaurine, sodium salt; *N*-methyl-*N*-palmitoyltaurine, sodium salt; and *N*-methyl-*N*-(tall oil/acyl)taurine, sodium salt. Sales of SMOT have remained steady for the past 4 years (Ref. 6). SMOT is produced by six firms: Crown-Metro, Inc., GAF Corp., Hart Products Corp., Finetex, Inc., Griffex Chemicals, and CNC Chemical Corp. American Hoechst, Inc., imports SMOT. U.S. production is conducted at six sites by batch processes (Ref. 7). The largest producer is GAF Corp. (Ref. 8).

### C. Human Exposure

Four of the six producers that responded to queries about production reported very similar methods (Refs. 9 through 12). It is likely, therefore, that production methods are consistent throughout the industry. The following production details were supplied by the largest manufacturer (well over 50 percent of U.S. production) (Refs. 8 and 9).

SMOT is manufactured on a batch basis. Batches are produced for approximately 3 weeks, which is defined as a campaign. Ten to twelve campaigns are run each year. The starting materials are charged into a reactor and allowed to react. When reaction is complete the aqueous product is discharged. The process is designed and operated so that there is no intentional release of the product. The substance is handled in solution; therefore, fugitive releases are unlikely. A total of 6 workers at one



plant are involved in the manufacture of the solution. Because of the physical form, worker exposure is limited to inadvertent releases such as spills or splashes, and therefore chemical gloves, protective aprons, and chemical goggles are considered sufficient.

Approximately 10 percent of the product is sold in this form. An additional 10 percent is further diluted with water or water/alcohol for the slurry and gel forms.

The solid form is produced by the drum drying of the solution. Nine workers are potentially exposed during this phase. This step in the processing results in the evolution of steam which is controlled and released to the environment. The material is then bagged or drummed in an enclosed process. Although the product is capable of minor dusting, losses in this phase of manufacturing, including workplace and environmental release, account for only 500 lbs. per year (Ref. 9).

Although the above description concerns only one SMOT manufacturer, confidential information submitted by the other manufacturers leads the Agency to conclude that manufacturing worker exposure to SMOT is not substantial.

The major users of SMOT are the textile and pesticide-formulating industries (Ref. 8). In textile mills many different surfactants including SMOT are used for the washing of fabrics before dyeing, during the dyeing per se, and for washing after dyeing (Ref. 13). Only the liquid form of SMOT is used in textile mills (Ref. 14). One worker on each of the three shifts dilutes the 32-percent SMOT (concentration received from manufacturer) to 1-2 percent before mixing it with the wash water or dye bath. The resulting concentration in the baths is approximately 0.07 percent (Ref. 14). Protective clothing is available for these workers, but the extent to which it is used varies from mill to mill. At times workers are required to cut swatches from the damp fabric to check the color. Although they wear gloves for this operation, they may remove them in the process of rinsing the swatch and thereby come in contact with SMOT (Ref. 13). According to the National Occupational Hazard Survey conducted by the National Institute for Occupational Safety and Health (1972-1974), approximately 585 textile workers are potentially exposed to SMOT (Ref. 15).

A minor application of SMOT is in the production of black and white photographic paper. Worker exposure for this entire industry has not been determined. However, EPA believes the exposure to be very slight because of the

high degree of automation of the process and the need for enclosure of the process because of light sensitivity. In the production process of one of the largest producers of this type of photographic paper, 11 employees are potentially exposed during the process of mixing chemicals. Each one is exposed approximately 9 times per year for about 3 minutes per exposure or 27 minutes of exposure per worker per year. This is equivalent to 5 worker hours per year (Refs. 16 and 25).

The only confirmed TSCA use of SMOT in a consumer product is black and white photographic paper in which SMOT is encapsulated in the coating at a concentration of less than 0.01 percent. This paper is developed by the wet process (Refs. 17 and 18).

Although the ITC believed SMOT was used as a component of rug shampoos, laundry soaps, household detergents, and surface coatings (49 FR 46931), EPA could find no evidence of these uses.

Pesticide formulators use the dry or flake form of SMOT which consists of at least 67 percent SMOT, 19-20 percent sodium chloride, 8-9 percent sodium oleate, 1-3 percent water, and a trace of sodium sulfate (Ref. 9). The particles are approximately 0.5 to 1 mm in diameter; therefore, dusting and worker inhalation are minimal (Ref. 19). There are approximately 20 sites with six workers per site in the U.S. where pesticide-formulating workers could be potentially exposed to SMOT (Ref. 20).

#### D. Health Effects

1. *Acute oral toxicity.* Seidenfaden (Ref. 21) reported that the oral LD<sub>50</sub> of SMOT in mice was 3.7 g/kg body weight.

Hopper et al. (Ref. 22) found the oral LD<sub>50</sub> in Harlan strain albino mice to be 6.83 g/kg body weight. The mice (10/group) received 0.5 cc of solution/20 g body weight. All deaths occurring within 72 hours of treatment were considered compound related. Hopper et al. (Ref. 22) also determined that the intravenous LD<sub>50</sub> value for SMOT in mice is 0.35 g/kg. Animals were observed for 24 hours after treatment in this case.

Other acute oral toxicity studies for SMOT with similar results are included in Ref. 9.

2. *Primary dermal irritation.* In a study of dermal irritation, six New Zealand white rabbits of mixed sex were employed. One-half milliliter of a 20-percent aqueous solution of Tauranol MS\* (the paste form of SMOT produced by Finetex, 32 to 33 percent active ingredient) adjusted to pH 7.0 was applied to clipped areas of intact and abraded skin. The test material was covered by an occlusive patch which

was removed after 24 hours. The application sites were observed and scored for erythema and edema 24 and 72 hours following treatment. The primary irritation index calculated from these scores was 0.60, which was interpreted to mean that the potential exists from this compound to be slightly irritating (Ref. 23).

Another acute dermal irritation animal study for SMOT with similar results is included in Ref. 21.

In an epicutaneous test, SMOT was applied to the skin of highly eczematous persons as an aqueous solution and left to dry (Ref. 21). SMOT was reported to have very good skin compatibility. No further details were provided.

3. *Primary eye irritation.* In a study of ocular irritation in six New Zealand white rabbits, a 20-percent aqueous solution of Tauranol MS\* (pH 7.0) was employed (Ref. 23). One-tenth milliliter was applied to the right eye of each animal. The untreated left eye served as a control. The treated eyes remained unwashed for hours. The eyes were observed 1, 2, and 3 days after treatment and were scored for the presence and severity of ocular lesions. The total possible score/animal/day was 110. On day 1, the average score for six animals was 3.0. On days 2 and 3, the score for all animals was 0.0. The authors concluded that SMOT was not an ocular irritant to rabbits under these conditions.

Other acute ocular irritation studies for SMOT with similar results are included in Refs. 9, 21 and 22.

4. *Primary dermal sensitivity.* An *in vivo* study to determine photoallergic and contact allergic potentials of Igepon TC-42\* (at least 24 percent SMOT, 6 percent sodium chloride, 65 percent water and a trace of sodium sulfate) on human skin was conducted with 31 human females age 20 to 63. The test material was diluted with water to 50 percent and applied on the inner aspect of the forearm. The other forearm was considered the control. Patches remained in place for 24 hrs. after which the degree of dermal response was recorded. Selected contact sites were then subjected to ultraviolet irradiation 3 days per week for 10 irradiations. After a 10 to 13 day rest, challenge patches were applied to virgin adjacent sites. After 24 hrs, test sites were examined for degree of response. Virgin sites were then irradiated and readings taken 24 and 48 hrs later. Only transient reaction was observed; the test was considered to be negative (Ref. 9).

Another dermal sensitization test for SMOT with human volunteers with similar results is included in Ref. 9.



5. *Subchronic oral toxicity.* Five or 10 mice receiving 10 percent of the SMOT LD<sub>50</sub> by gavage (or 663 mg/kg body weight) daily, 6 days/weeks for a total of 25 doses, were dead by the tenth dose (Ref. 22). The rest of the animals survived to the end of the experiment. No further details were provided.

Fitzhugh and Nelson (Ref. 24) conducted a 16-week experiment in which SMOT was fed to groups of five male weanling Osborne-Mendel rats as 0.5, 1, 2, 4, and 8 percent of the diet. Body weights and food consumption were determined at weekly intervals. An apparent dose-related decrease in growth was seen over the 16-week period. At dosage levels of 4 and 8 percent, retardation of the growth rate reached significant levels ( $p < 0.05$ ). Two of the five animals receiving the 8-percent concentration died with gastrointestinal irritation during the experimental period. Gross examination of animals sacrificed at 16 weeks showed concentration-dependent gastrointestinal irritation, which probably prevented proper nutritional intake at the higher doses. No microscopic examinations were performed.

Repeated feeding of SMOT (100 mg/kg body weight) to male albino rats (mixed strains) did not produce any apparent effects (Ref. 20). The available report does not specifically state whether SMOT was administered by gavage or incorporated into the diet. The study was described as subchronic, but its duration was not reported. Blood and urine samples were analyzed, and macroscopic and histological examinations were performed upon autopsy without revealing any detrimental effects. No further details were reported.

The Agency believes that these subchronic test data do not suggest that human exposure to SMOT may present an unreasonable risk to human health.

6. *Teratogenicity and reproductive toxicity.* The Agency has no data on the teratogenicity and reproductive toxicity of SMOT.

7. *Mutagenicity.* The Agency has no data on the mutagenicity of SMOT.

8. *Carcinogenicity.* The Agency has no data on the carcinogenicity of SMOT.

### III. Decision Not to Initiate Rulemaking

EPA has decided not to initiate rulemaking to require health effects testing of SMOT under section 4 of TSCA. The basis for this determination is that because of its limited potential for human exposure there is not significant or substantial human exposure nor do existing data provide any reason for believing that SMOT may

present an unreasonable risk of injury to human health.

Human exposure to SMOT is expected to be minimal for the following reasons:

(a) Very few SMOT production workers are potentially exposed. The process is essentially closed, and, except for the drying process, SMOT is in solution. Owing to its low vapor pressure, there is little prospect for worker exposure via inhalation. During the drying operation, a small number of workers could be potentially exposed to 150 mg/day (OSHA nuisance dust limit).

(b) Three industries use SMOT: textile production, pesticide formulation, and black and white photographic paper production. Relatively few workers are exposed in these industries, and the majority of these workers are exposed to very low SMOT concentrations.

(c) The potential for consumer exposure is very slight. The only known consumer product containing SMOT is photographic paper. The SMOT, present below 0.01 percent, is expected to remain encapsulated in the coating on the paper.

Acute and subchronic oral toxicity testing of SMOT indicate a low degree of toxicity. Oral subchronic effects are apparently due to gastrointestinal irritation; no organ-specific effects were recorded. Only mild irritation was elicited by acute dermal and ocular tests. Skin sensitization testing produced negative results. The Agency has no data indicating reproductive toxicity, mutagenicity, or carcinogenicity for SMOT.

The available toxicity data on SMOT (discussed in Unit I.D.) do not provide any basis to believe that these levels of exposure to SMOT may present an unreasonable risk of health effects to the exposed workers or consumers.

### IV. Public Record

EPA has established a public record for this decision not to test under section 4 of TSCA (docket number OPTS-42078). The record includes the following information:

#### A. Support Documentation

(1) Federal Register notices pertaining to this decision consisting of:

(a) Notice containing the ITC designation of SMOT to the Priority List.

(b) Notices requiring TSCA section 8(a) and (d) reporting for SMOT.

(2) Communications consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(d) Reports—published and unpublished factual materials, including contractors' reports.

#### References

- (1) Cook T.M., Goldman C.K. "Degradation of anionic detergents in Chesapeake Bay." *Chesapeake Science*, 15(1):52-55, 1974.
- (2) Hawley, G.G. *The Condensed Chemical Dictionary*, 9th ed. New York, NY: Van Nostrand Reinhold Co., p. 795, 1977.
- (3) USEPA. U.S. Environmental Protection Agency, Washington, D.C. Interoffice memorandum from P. Harrigan, Design and Development Branch, to R. Sanford, Test Rules Development Branch, July 26, 1985.
- (4) Huse, G. Crown-Metro Corp., P.O. Box 5695, Eckelon Rd., Donaldson Center, Greenville, SC 29606. Summarized telephone conversation with R.B. Sanford, U.S. Environmental Protection Agency, Washington, D.C. April 17, 1985.
- (5) USITC. U.S. Internatl. Trade Commission. Synthetic organic chemicals. United States production and sales, 1983. Publication No. 1588. Washington, D.C.: U.S. Government Printing Office, 1984.
- (6) Ansell, J. GAF Corp., 1361 Alps, Wayne, NJ 07470. Summarized telephone conversation with R. Sanford, U.S. Environmental Protection Agency, Washington, D.C. June 14, 1985.
- (7) Syracuse Research Corp., Merrill, La., Syracuse, NY 13210. Letter from M. Neal to R. Sanford, U.S. Environmental Protection Agency, Washington, D.C. October 1, 1985.
- (8) Ansell, J. GAF Corp., 1361 Alps, Wayne, NJ 07470. Summarized telephone conversation with R. Sanford, U.S. Environmental Protection Agency, Washington, D.C. June 3, 1985.
- (9) GAF Corp. "GAF Response to EPA. Sodium N-Methyl-N-Oleoyltaurine OPTS-41015; FRL-2725-F" June 1985.
- (10) Crown Metro, Inc. Greenville, SC 29606. Letter from G.C. Huse to M. Neal, Syracuse Research Corp., Syracuse, NY 13210. February 8, 1985.
- (11) Griffitex Chemicals. Opelika, AL 36801. Letter from D.A. MacEwen to M. Neal, Syracuse Research Corp., Syracuse, NY 13210. February 5, 1985.
- (12) C.N.C. Chemical Corp. Technical bulletin: GEL CONC: manufacturing process. P.O. Box 997, Annex Station, Providence, RI 02901. n.d.
- (13) USEPA. U.S. Environmental Protection Agency, Washington, D.C. Summarized interoffice telephone conversation between G. Heath, Chemical Engineering Branch and R. Sanford, Test Rules Development Branch, August 5, 1985.
- (14) MacEwen, D. Griffitex Chemicals/ Westpoint-Pepperilli, Inc., 1900 Cunningham Dr., Opelika, AL 36801. Summarized telephone conversation with R. Sanford, U.S. Environmental Protection Agency, Washington, D.C. August 2, 1985.
- (15) Sundén, D. National Institute for Occupational Safety and Health, Cincinnati, OH. Summarized telephone conversation with R. Sanford, U.S. Environmental Protection Agency, Washington, DC, July 31, 1985.



- (16) Humphreys, J. Eastman Kodak Co., Rochester, NY 14650. Summarized telephone conversation with S. Beals, Syracuse Research Corp., Merrill, La., Syracuse, NY 13210 August 12, 1985.
- (17) Eastman Kodak Co. Rochester, NY 14650. Letter from R.L. Raleigh to M. Neal, Syracuse Research Corp., Syracuse, NY 13210. May 17, 1985.
- (18) Neal, M. Syracuse Research Corp., Morrill, La., Syracuse, NY 13210. Summarized telephone conversation with R. Sanford, U.S. Environmental Protection Agency, Washington, D.C. August 5, 1985.
- (19) Ansell, J. GAF Corp., 1361 Alps, Wayne, NJ 07470. Summarized telephone conversation with R. Sanford, U.S. Environmental Protection Agency, Washington, D.C. July 2, 1985.
- (20) USEPA. U.S. Environmental Protection Agency, Washington, D.C. Interoffice memorandum between P. Quillen, Chemical Engineering Branch and R. Sanford, Test Rules Development Branch, August 14, 1985.
- (21) Seidenfaden, M.L. "The use of taurides, sarcosides and isethionates in cosmetics." *American Perfumer and Cosmetics*, 81: 29-32, 1986.
- (22) Hopper S.S., Hulpieu H.R., Cole V.V. "Some toxicological properties of surface-active agents." *Journal of American Pharmaceutical Association*, 38: 428-432, 1949.
- (23) Finetex, Inc. Elmwood Park, NJ 07407. Final Report on the primary dermal irritation, ocular irritation and acute oral toxicity of Tauranol MS. Prepared by Consumer Product Testing Co., Inc., Fairfield, NJ 07006. 1978.
- (24) Fitzhugh, O.G., Nelson, A.A. "Chronic oral toxicities or surface-active agents." *Journal of the American Pharmaceutical Association Science Edition*, 37: 29-32, 1948.
- (25) Humphreys, J. Eastman Kodak Co. Rochester, NY 14650. Summarized telephone conversation with S. Beals, Syracuse Research Corp., Merrill, La., Syracuse, NY 13210. April 23, 1985.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St., SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

(15 U.S.C. 2603)

Dated: October 31, 1985.

John A. Moore,  
Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-26528 Filed 11-5-85; 8:45 am]

BILLING CODE 6560-50-M

## EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 4]

### Agency Forms Submitted for OMB Review

Agency: Export-Import Bank of the United States.

Action: In accordance with the provisions of the Paperwork Act of 1980, Eximbank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for Review.

Purpose: The proposed Annual Competitiveness Report Survey of Exporters and Bankers as authorized by 12 U.S.C. 635(b), Export-Import Bank of the U.S. Act of 1945, as amended, is to be completed by U.S. banks and exporters familiar with Eximbank's programs as a means of evaluating the private sector's view on the extent to which Eximbank has provided export credit programs competitive with the export credit programs offered by the major foreign OECD governments.

The collection of the information will enable Eximbank to assess and report to the U.S. Congress the private sector's view of its programs' competitiveness, as required by law.

Summary: The following summarizes the information collection proposal submitted to OMB:

- (1) Type of request: revision.
- (2) Number of forms submitted: one.
- (3) Form number: EIB No. 85-3 (Rev. 10/85).
- (4) Title of information collection: Annual Competitiveness Report Survey to Exporters and Bankers.
- (5) Frequency of use: annual.
- (6) Respondents: commercial banks and exporters in the United States.
- (7) Estimated total number of responses: 85.
- (8) Estimated total number of hours needed to fill out the form: 63.75.

#### Additional Information or Comments:

Copies of the proposed survey may be obtained from Helene Wall, Agency Clearance Officer (202) 566-8111. Comments and questions should be directed to Francine Picoult, Office of Management and Budget, Information and Regulatory Affairs, Room 3235, Washington, D.C. 20503, (202) 395-7231. All comments should be submitted within two weeks of the date of this notice; if you intend to submit comments but are unable to meet this deadline, please advise Francine Picoult by telephone that comments will be submitted late.

Dated: October 31, 1985.

Helene Wall,

Agency Clearance Officer.

[FR Doc. 85-26509 Filed 11-5-85; 8:45 am]

BILLING CODE 6690-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### Bowman Aviation, Inc., et al; Hearing Designation Order

In re the Applications of: PR Docket No. 85-322:

Bowman Aviation, Inc., Anderson, South Carolina. File No. 107-A-L-35.  
Anderson Aviation, Inc., Anderson, South Carolina. File No. 111-A-L-35.  
For an aeronautical advisory station to serve Anderson County Airport, Anderson, South Carolina.

Adopted: October 28, 1985.

Released: November 1, 1985.

1. Bowman Aviation, Inc. (Bowman) and Anderson Aviation, Inc. (Anderson) have each filed an application for authority to operate an aeronautical advisory station at Anderson County Airport, Anderson, South Carolina. Each application is for a new station authorization, and each application meets the basic eligibility requirements of Part 87 of the Commission's rules. Since Section 87.251(a) of the Commission's rules provides that only one aeronautical advisory station may be authorized at an airport, the applications captioned above are mutually exclusive. Accordingly, it is necessary to designate these applications for comparative hearing in order to determine which, if any, should be granted.

2. In view of the foregoing, it is ordered, that pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and Section 0.331 of the Commission's rules, 47 CFR 0.331, the applications captioned above are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order on the following issues:

(a) to determine which applicant would provide the public with the better aeronautical advisory service based on the following comparative considerations:

(1) Location of the aviation service organization and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;



(3) Personnel available to provide advisory service;

(4) Experience of the applicants and their employees in aviation and aviation communications, including but not limited to operation of stations in the aviation services under Part 87 that may be or have been authorized to the applicant;

(5) Ability to provide information pertaining to primary and secondary communications as specified in Section 87.257 of the Commission's rules;

(6) Proposed radio system including control and dispatch points; and

(7) The availability of the radio facilities to other aviation service organizations;

(b) To determine in light of the evidence adduced on the foregoing issues which of the applications should be granted.

3. It is further ordered, that the burden of proof and the burden of proceeding with the introduction of evidence is on each applicant with respect to its application.

4. It is further ordered, that to avail themselves of an opportunity to be heard Bowman and Anderson, pursuant to § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), in person or by attorneys, must file with the Commission, within 20 days of the mailing of this Order, a written appearance, in triplicate, stating an intention to appear on the date set for hearing and to present evidence on the issues specified in this Order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

Federal Communications Commission.

Robert S. Foosner,

Chief, Private Radio Bureau.

[FR Doc. 85-26484 Filed 11-5-85; 8:45 am]

BILLING CODE 6712-01-M

## Mobilfone Communications; Erratum

In re Applications of: Otis L. Hale d/b/a/Mobilfone Communications:

For renewal of license of Station KLB500 authorized to operate on frequencies 152.03, 152.09, 152.18, and 152.21 MHz in the Public Land Mobile Service at Little Rock Arkansas.

CC Docket No. 82-15; File No. 23697-CD-R-79.

For renewal of license of Station KQZ752 authorized to operate on frequencies 152.24 and 158.70 MHz in the Public Land Mobile Service at Little Rock, Arkansas.

CC Docket No. 82-16; File No. 23700-CD-R-79.

For consent to assignment of licenses for Public Land Mobile Services Stations KLB500, KQZ752, KXX720, KUD228, KFL633, KUC892, KFL870, KUC893, KFJ890, KFT281 and KSV910, in the State of Arkansas.

For a construction permit for new facilities to operate in the Public Land Mobile Service at West Memphis, Arkansas.

For a construction permit for a new facility to operate on frequency 152.24 MHz in the Public Land Mobile Service at Russellville, Arkansas.

File Nos. 21689-CD-AL-1-85, 21690-CD-AL-2-85, 21691-CD-AL-2-85, 21692-CD-AL-2-85, 21693-CD-AL-1-85, 21694-CD-AL-1-85, 21695-CD-MP/ML-1-85, 100-M-AL-25.

File No. 8942-CD-P-(2)-73.

File No. 22650-CD-P-79.

Released: November 1, 1985.

1. On October 23, 1985, the Commission released an *Order to Show Cause and Memorandum Opinion and Order Designating Applications for Hearing*, FCC 85-587, in the captioned proceedings. The *Order* inadvertently failed to list two pending assignment applications. Accordingly, File Nos. 21695-CD-MP/ML-1-85 and 100-M-AL-25 should be added to the designated assignment applications listed in the caption and in paragraph 36 of the *Order*.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-26485 Filed 11-5-85; 8:45 am]

BILLING CODE 6712-01-M

## [Report No. W-2]

### Radio Broadcasting; Window Notice for the Filing of FM Broadcast Applications

Released: October 31, 1985.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed on the attached appendix may be submitted for filing during the period beginning November 15, 1985 and ending December 16, 1985 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Federal Communications Commission.

William J. Tricarico,

Secretary.

## Appendix

### Channel—286A

Elba—AL  
Bloomfield—IN  
Girard—KS  
Jonesville—LA  
Vicksburg—MS  
White Rock—NM

Fort Plain—NY  
Grove City—OH  
Sutherland—OR  
Hardeeville—SC  
Port Isabel—TX  
Richmond—VA

[FR Doc. 85-26487 Filed 11-5-85; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Information Collection Submitted to OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Application for Consent to Reduce or Retire Capital.

### Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

**ADDRESS:** Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington DC 20429.

Comments: Comments on this collection of information should be submitted by November 21, 1985.

**FOR FURTHER INFORMATION CONTACT:** Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 389-4351.

**SUMMARY:** The FDIC is requesting OMB to approve the use of a letter application by an insured State nonmember bank who seeks FDIC consent to reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures. Under 12 U.S.C. 1828(i)(1), such banks must obtain the prior consent of the FDIC prior to reducing or retiring capital. The use of a letter application by a bank desiring such consent enables the FDIC to meet its statutory



responsibility. It is estimated that it takes approximately one hour for the average bank to prepare the required letter application that describes in narrative form, the intended transaction and the benefits to be derived by the bank as a result of the transaction.

Dated: October 30, 1985.

Federal Deposit Insurance Corporation  
Hoyle L. Robinson,  
*Executive Secretary.*  
[FR Doc. 85-26419 Filed 11-5-85; 8:45 am]  
BILLING CODE 6714-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-747-DR]

### Connecticut; Amendment to Notice of a Major-Disaster Declaration

**AGENCY:** Federal Emergency  
Management Agency.  
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Connecticut (FEMA-747-DR), dated October 11, 1985, and related determinations.

**DATED:** October 30, 1985.

**FOR FURTHER INFORMATION CONTACT:**  
Sewall H.E. Johnson, Disaster  
Assistance Programs, Federal  
Emergency Management Agency,  
Washington, D.C. 20472, (202) 646-3616.

**NOTICE:** The notice of a major disaster for the State of Connecticut, dated October 11, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 11, 1985:

Hartford, Fairfield, Tolland and  
Windham Counties for Public  
Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance.)

Dave McLoughlin,  
*Acting Associate Director, State and Local  
Programs and Support, Federal Emergency  
Management Agency.*

[FR Doc. 85-26439 Filed 11-5-85; 8:45 am]  
BILLING CODE 6716-02-M

[FEMA-751-DR]

### Massachusetts; Notice of Major Disaster and Related Determinations

**AGENCY:** Federal Emergency  
Management Agency.  
**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA-751-DR), dated October 28, 1985, and related determinations.

**DATED:** October 28, 1985.

**FOR FURTHER INFORMATION CONTACT:**  
Sewall H.E. Johnson, Disaster  
Assistance Programs, Federal  
Emergency Management Agency,  
Washington, D.C. 20472 (202) 646-3616.

**NOTICE:** Notice is hereby given that, in a letter of October 28, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from Hurricane Gloria, beginning on September 27, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Albert A. Gammal, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Massachusetts to have been affected adversely by this declared major disaster and are designated eligible for Public Assistance:

Bristol, Middlesex, Norfolk, and Plymouth Counties.  
The Towns of Manchester, Rockport, and Saugus in Essex County.  
The Towns of Blandford, Chester, and Granville in Hampden County.  
The City of Revere in Suffolk County.  
The Towns of Holden, Shrewsbury, and Southborough in Worcester County.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance.)

James J. Delaney,  
*Acting Deputy Director, Federal Emergency  
Management Agency.*

[FR Doc. 85-26441 Filed 11-5-85; 8:45 am]  
BILLING CODE 6716-02-M

[FEMA-748-DR]

### Rhode Island; Amendment to Notice of a Major-Disaster Declaration

**AGENCY:** Federal Emergency  
Management Agency.  
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Rhode Island (FEMA-748-DR), dated October 15, 1985, and related determinations.

**DATED:** October 29, 1985.

**FOR FURTHER INFORMATION CONTACT:**  
Sewall H.E. Johnson, Disaster  
Assistance Programs, Federal  
Emergency Management Agency,  
Washington, D.C. 20472, (202) 646-3616.

**NOTICE:** The notice of a major disaster for the State of Rhode Island, dated October 15, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 15, 1985:

Bristol, Kent, and Providence Counties for  
Public Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance.)

Samuel W. Speck,  
*Associate Director, State and Local Programs  
and Support, Federal Emergency  
Management Agency.*

[FR Doc. 85-26442 Filed 11-5-85; 8:45 am]  
BILLING CODE 6716-02-M

## FEDERAL RESERVE SYSTEM

### BANCO Safra S.A. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal



Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 27, 1985.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Banco Safra S.A.*, Sao Paulo, Brazil; *Safra S.A. Administracao E Participacoes*, Sao Paulo, Brazil; *Cartago Empreendimentos E Participacoes LTDA.*, Sao Paulo, Brazil; and *Safra Holding S.A.*, Sao Paulo, Brazil; to become a bank holding company by acquiring 50.6 percent of the voting shares of Safra National Bank of New York, New York, New York.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Monticello Corporation*, Monticello, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Monticello, Monticello, Wisconsin. Comments on this application must be received not later than November 25, 1985.

2. *The Marine Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Mequon State Bank, Mequon, Wisconsin.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Guaranty Development Company*, Livingston, Montana; to acquire 99.48 percent of the voting shares of First Citizens Bank of Boston, Bozeman, Montana.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Adbank Holding Company*, Ogallala, Nebraska; to merge with each of the following bank holding companies: Chase County Corporation, Ogallala, Nebraska, thereby indirectly acquiring Chase County Bank and Trust Company, Imperial, Nebraska; Adco, Ogallala, Nebraska, thereby indirectly

acquiring Bank of Brule, Brule Nebraska; and First Security Corporation, Ogallala, Nebraska, thereby indirectly acquiring First Security Bank, Sutherland, Nebraska. Applicant has also applied to acquire directly Keith County Bank and Trust, Ogallala, Nebraska and Security State Bank, Madrid, Nebraska.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Western Bancshares of Alamogordo, Inc.*, Alamogordo, New Mexico; to become a bank holding company by acquiring 80 percent of the voting shares of Western Bank, Alamogordo, New Mexico.

Board of Governors of the Federal Reserve System, October 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26397 Filed 11-5-85; 8:45 am]

BILLING CODE 3210-01-M

#### **Barnett Banks of Florida, Inc., et al.; Formations of, Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 27, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Barnett Banks of Florida, Inc.*, Jacksonville, Florida; to acquire 100 percent of the voting shares of Barnett

Bank of Santa Rosa County, Santa Rosa, Florida, a *de novo* bank.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F & M Financial Services Corporation*, Menomonee Falls, Wisconsin; to acquire 100 percent of the voting shares of The Farmers State Bank, Sullivan, Wisconsin.

2. *M. G. Bancorporation, Inc.*, Chicago, Illinois; to acquire 95.82 percent of the voting shares of Du Page County Bancorp, Inc., Glendale Heights, Illinois, thereby indirectly acquiring Du Page County Bank of Glendale Heights, Glendale Heights, Illinois.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Community Bancshares, Inc.*, Middleton, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of the Bank of Middleton, Middleton, Tennessee. Comments on this application must be received not later than November 20, 1985.

Board of Governors of the Federal Reserve System, October 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26398 Filed 11-5-85; 8:45 am]

BILLING CODE 3210-01-M

#### **Canton Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such



as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 1985.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Canton Bancshares, Inc.*, Hannibal, Missouri; to engage directly in making, acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others, pursuant to § 225.25(B)(1) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Bankshares of Las Animas, Inc.*, Las Animas, Colorado; to engage directly in making loans and other extensions of credit pursuant to § 225.25(B)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26400 Filed 11-5-85; 8:45 am]

BILLING CODE 6210-01-M

#### Irving Bank Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 1985.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Irving Bank Corporation*, New York, New York; to engage *de novo* through its subsidiary, Irving Financial Centers, Inc., New York, New York, in making and servicing loans for its own account and for the account of others, leasing personal and real property, pursuant to § 225.25(b)(1) and (5) of Regulation Y.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, CoreStates Securities Corp., Philadelphia, Pennsylvania, in the buying and selling of securities, solely as agent for the account of customers, related securities credit activities such as offering custodial services, individual retirement accounts and cash management services, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, October 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26401 Filed 11-5-85; 8:45 am]

BILLING CODE 6210-01-M

#### Agency Forms Under OMB Review

October 31, 1985.

#### Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

#### FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

*Proposal to approve under OMB delegated authority the extension without revision of the following reports:*

1. Report title: Report on Loans Granted to Executive Officers During Preceding Quarter.

Agency form number: FR 2105S.

OMB Docket number: 7100-0049.

Frequency: Quarterly.

Reporters: All state member banks.

Small businesses are affected.

General description of report:

This information collection is mandatory (12 U.S.C. 375a) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report provides information from all state member banks on the number of, total dollar amount of, and range of interest rates concerning loans to their own executive officers. The information provided is for the activity of the same quarter as the Call Report to which it is attached.

2. Report title: Applications for and to Cancel Federal Reserve Bank Stock—National Bank, Nonmember Bank, Member Bank.

Agency form number: FR 2030, 2030a, 2056, 2086a, and 2086b.

OMB Docket number: 7100-0042.

Frequency: Event-generated.

Reporters: National, State Member, and nonmember banks.

Small businesses are affected.

General Description of report:



This information collection is mandatory (12 U.S.C. 222, 35, 287, & 321) and is not given confidential treatment.

These Federal Reserve Bank Stock application forms are required to be submitted to the Federal Reserve System by any National Bank, State Member Bank or nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank Stock holdings, or cancel such stock.

Board of Governors of the Federal Reserve System, October 31, 1985.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 85-26396 Filed 11-5-85; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective—
(1) 85-1185—The Coca-Cola Company's proposed acquisition of voting securities of Athens Coca-Cola Bottling Co.	Oct. 16, 1985.
(2) 85-1200—Amfac, Inc.'s proposed acquisition of assets of The Rucker Company, (NL Industries, Inc., UPE).	Do.
(3) 85-1205—Utilicorp United, Inc.'s proposed acquisition of assets of Peoples Natural Gas Company, (InterNorth, Inc., UPE).	Do.
(4) 85-1210—Blue Cross and Blue Shield Mutual of Northern Ohio's proposed acquisition of voting securities of Blue Cross of Northwest Ohio.	Do.

Transaction	Waiting period terminated effective—
(5) 85-0001—US West, Inc.'s proposed acquisition of voting securities of Commercial Funding, Inc., (Nordic American Banking Corp., UPE).	Do.
(6) 85-0006—Reliance Group Holdings, Inc., (Saul P. Steinberg, UPE) proposed acquisition of voting securities of Frank B. Hall & Co., Inc.	Do.
(7) 85-0012—Michael E. Heisley's proposed acquisition of assets of Eastmet Industrial Products Group, (Eastmet Corporation, UPE).	Do.
(8) 85-0030—International Controls Corporation's proposed acquisition of voting securities of Transway International Corp.	Do.
(9) 85-0033—International Controls Corporation's proposed acquisition of voting securities of Transway International Corp.	Do.
(10) 85-0034—Ametek, Inc.'s proposed acquisition of assets of Houston Instrument Division, (Bausch & Lomb Incorporated, UPE).	Do.
(11) 85-1170—Koch Industries, Inc.'s proposed acquisition of assets of Williston Gas System, (Phillips Petroleum Company, UPE).	Oct. 17, 1985.
(12) 85-0056—Edward C. Levy, Jr. and Julie Levy's proposed acquisition of voting securities of The L.E. Myers Co. Group.	Do.
(13) 85-0005—Alberto-Culver Co.'s proposed acquisition of voting securities and assets of Victory Beauty Systems, Inc., (Michael H. Davis, UPE).	Oct. 18, 1985.
(14) 85-0008—West Virginia University Hospitals, Inc.'s proposed acquisition of voting securities of Gamcare, Inc.	Do.
(15) 85-0019—Lincoln National Corp.'s proposed acquisition of voting securities and assets of Lynch & Mayer, Inc., (Eldon C. Mayer, Jr., UPE).	Do.
(16) 85-0051—The Rymer Company's proposed acquisition of voting securities of Murry's Steaks, Inc.	Do.
(17) 85-0078—People Express, Inc.'s proposed acquisition of voting securities of Frontier Holdings, Inc.	Do.
(18) 85-0079—People Express, Inc.'s proposed acquisition of voting securities of Frontier Holdings, Inc.	Do.
(19) 85-0002—MAXXAM Group, Inc.'s proposed acquisition of voting securities of UNC Resources, Inc.	Oct. 21, 1985.
(20) 85-0044—Vishay Intertechnology, Inc.'s proposed acquisition of voting securities of Dale Electronics, Inc., (The Lionel Corporation, UPE).	Do.
(21) 85-0052—Mezzanine Capital Corporation, Limited's proposed acquisition of voting securities of Dale Electronics, Inc., (The Lionel Corporation, UPE).	Do.
(22) 85-1202—Marriott Corporation's proposed acquisition of voting securities of Howard Johnson Company, (Imperial Group plc, UPE).	Oct. 22, 1985.
(23) 85-1208—Prime Motor Inns, Inc.'s proposed acquisition of assets of Marriott Corp.	Do.
(24) 85-0023—The Procter & Gamble Company's proposed acquisition of voting securities of Richardson-Vicks, Inc.	Do.
(25) 85-0024—The Procter & Gamble Company's proposed acquisition of voting securities of Richardson-Vicks, Inc.	Do.
(26) 85-0028—The Procter & Gamble Company's proposed acquisition of voting securities of Richardson-Vicks, Inc.	Do.
(27) 85-0029—The Procter & Gamble Company's proposed acquisition of voting securities of Richardson-Vicks, Inc.	Do.
(28) 85-1193—Saul P. Steinberg's proposed acquisition of voting securities of Green Tree Acceptance, Inc.	Oct. 24, 1985.
(29) 85-0003—Houston Industries, Incorporated's proposed acquisition of certain assets of Fluor Corp.	Do.

Transaction	Waiting period terminated effective—
(30) 85-0040—Rio Tinto-Zinc Corp.'s proposed acquisition of voting securities of Potash Company of America, (Ideal Basic Industries, Inc., UPE).	Do.
(31) 85-0010—Rykoff-Sexton, Inc.'s proposed acquisition of assets of PYA/Monarch, Inc., (Sara Lee Corporation, UPE).	Do.
(32) 85-0085—Strategic Health Systems' proposed acquisition of voting securities of Suburban Community Hospital.	Do.
(33) 85-0011—Danaher Corporation's proposed acquisition of voting securities of The Scott & Fetzer Co.	Oct. 25, 1985.
(34) 85-0095—Texas International Company's proposed acquisition of assets of Phillips Petroleum Co.	Do.
(35) 85-0115—Facom S.A.'s proposed acquisition of voting securities of SK Hand Tool Corporation, (Thomas M. Corcoran, UPE).	Do.
(36) 85-0116—Facom S.A.'s proposed acquisition of voting securities of SK Hand Tool Corporation, (Daniel J. Craibe, UPE).	Do.
(37) 85-0064—Avalon Corporation's proposed acquisition of certain voting securities of Maynard Oil Co.	Do.

**FOR FURTHER INFORMATION CONTACT:**  
Sandra M. Peay, Legal Technician,  
Premerger Notification Office, Bureau of  
Competition, Room 301, Federal Trade  
Commission, Washington, DC 20580,  
(202) 523-3894.

By direction of the Commission.  
Emily H. Rock,  
Secretary.

[FR Doc. 85-26404 Filed 11-5-85; 8:45 am]  
BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Advisory Committee; Amendment of Notice

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Anesthesiology and Respiratory Therapy Devices Panel to reflect a change in the agenda for the open committee discussion and to provide until November 13 for interested persons to notify the contact person of their intent to make formal presentations during the open public hearing portion of the November 22 meeting of the committee, notice of which was published in the Federal Register of October 18, 1985 (50 FR 42225). The agenda for the open committee discussion is revised to read as follows:

"Open committee discussion. The committee will discuss an anesthesia checkout list and a premarket approval



application (PMA) for a high-frequency ventilator."

**FOR FURTHER INFORMATION CONTACT:**

Michael S. Gluck, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

Dated: November 1, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-26411 Filed 11-5-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### Arizona; Yuma District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management; Interior.

**ACTION:** Yuma (Arizona) District Advisory Council meeting.

**SUMMARY:** A meeting and field tour by the Yuma District Advisory Council will be held on Friday, December 6, 1985. Council members will tour the La Posa Long-Term Visitor Area in the Yuma Resource Area.

**FOR FURTHER INFORMATION CONTACT:** Douglas B. Stockdale, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85364, (602) 726-6300.

**SUPPLEMENTARY INFORMATION:** The tour will begin at 10 a.m. from Cushman's Trailer Park in Quartzsite, Arizona. The Council will return to Cushman's Trailer Park at 2 p.m. for a meeting. Discussions will center on the day's tour and other Council initiated topics. The public is invited to attend the tour and the meeting but must provide their own transportation. Written statements from the public may be filed for the Council's consideration. Statements must arrive at the District Office by December 2, 1985.

Dated: October 31, 1985.

J. Darwin Snell,

District Manager.

[FR Doc. 85-26567 Filed 11-5-85; 8:45 am]

BILLING CODE 4310-32-M

### Fish and Wildlife Service

#### Notice of Receipt of Applications for Permits

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

#### PRT-701108

Applicant: David J. Morafka, Carson, CA

The applicant requests a permit to import up to ten hatchlings and re-export them to Mexico and to import up to 100 plasma and fecal samples of the Bolson tortoise (*Gopherus flavomarginatus*) for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service at the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 1, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-26423 Filed 11-5-85; 8:45 am]

BILLING CODE 4310-55-M

### Minerals Management Service

#### Outer Continental Shelf Central and Western Gulf of Mexico; Notice of Availability of the Final Environmental Impact Statement for Proposed Oil and Gas Lease Sales 104 (April 1986) and 105 (July 1986)

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a final environmental impact statement (EIS) relating to proposed 1986 Outer Continental Shelf (OCS) oil and gas lease sales of available unleased blocks in the Central and Western Gulf of Mexico (GOM). The proposed Central Gulf Sale 104 will offer for lease approximately 31.3 million acres and the Western Gulf Sale 105 will offer approximately 27.1 million acres.

Single copies of the Final EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, Post Office Box 7944, Metairie, Louisiana 70010.

Copies of the Final EIS will be available for review by the public in the following libraries: Austin Public Library, 401 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street,

Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Southmost College Library, 1825 May Street, Brownsville, Texas; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana State Library, Riverside, Baton Rouge, Louisiana; Lafayette Public Library, Post Office Box 3427, Lafayette, Louisiana; Calcasieu Parish Library, Downtown Branch, Lake Charles, Louisiana; Harrison County Library, 14th Avenue and Beach Street, Gulfport, Mississippi; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Meyers, Florida; Charlotte Glades Regional Library Systems, 2280 NW Aaron Street, Port Charlotte, Florida; and Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida.

Approved:

Wm. D. Bettenberg,

Director, Minerals Management Service.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 85-26449 Filed 11-5-85; 8:45 am]

BILLING CODE 4310-MR-M

### National Park Service

#### Boston National Historical Park Advisory Commission; meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Boston National Historical Park Advisory Commission. The matters to be discussed at this meeting include:

1. Navy Yard Access, Parking, and Transportation
2. Park Reorganization
3. Boston African American National Historic Site
4. Dorchester Heights Sidewalk Repairs
5. People and Places Programs
6. Cooperative Site Reports
7. Report of Superintendent

**DATE:** November 14, 1985, 11:00 am to 3:00 p.m.



**ADDRESS:** Boston National Historical Park, Hull Room, Building 5, Charlestown Navy Yard.

**FOR FURTHER INFORMATION CONTACT:** John J. Burchill, Boston National Historical Park, 15 State Street, Boston, Massachusetts 02109 (617-242-5844).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Federal Advisory Commission Act, Pub. L. 92-463. The Commission was established by Pub. L. 93-431 to advise the Secretary of the Interior on matters relating to the development of the Boston National Historical Park. If handicapped accessibility is required, please notify the Superintendent at least five working days prior to the meeting.

Herbert S. Cables, Jr.,

*Regional Director, North Atlantic Region.*

[FR Doc. 85-26507 Filed 11-5-85; 8:45 am]

BILLING CODE 4310-70-M

#### Statue of Liberty-Ellis Island Centennial Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Statue of Liberty-Ellis Island Centennial Commission (the "Commission") will be held Friday, November 22, 1985 at 9:00 a.m. in the Gitlon Amphitheatre, School of Business Administration, New York University, 100 Trinity Place, New York, New York.

The meeting is being held in accordance with the Charter of the Commission to discuss the status of the restoration of the Statue of Liberty and Ellis Island and the celebrations involving the centennial of the former. The agenda of the meeting is as follows:

1. Chairman's report on the status of the restoration including a progress report on fundraising.
2. Presentation of plans for celebration surrounding the reopening of the Statue of Liberty on July 3-6, 1985.
3. Discussion of the development of the Southern portion of Ellis Island.
4. Such other business as may come before the meeting.

The meeting will be open to the public.

Dated: November 1, 1985.

Ann McLaughlin,

*Under Secretary.*

[FR Doc. 85-26506 Filed 11-5-85; 8:45 am]

BILLING CODE 4310-70-M

#### Upper Delaware Citizens Advisory Council, Meeting

**AGENCY:** National Park Service, Interior

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATE:** November 22, 1985, 7:00 p.m.

**ADDRESS:** Town of Tusten, Narrowsburg, New York.

**FOR FURTHER INFORMATION CONTACT:** John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764-0159. (717) 729-7135.

**SUPPLEMENTARY INFORMATION:** The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764-0159. Minutes of meeting will be available for inspection for weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1-3/4 miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: October 25, 1985.

James W. Coleman, Jr.,

*Regional Director, Mid-Atlantic Region.*

[FR Doc. 85-26508 Filed 11-5-85; 8:45 am]

BILLING CODE 4310-70-M

#### INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 320 (Sub-No. 3)]

#### Product and Geographic Competition

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision.

**SUMMARY:** The Commission adopts certain changes in its guidelines for considering product and geographic competition in market dominance proceedings, and other more minor changes. The revised guidelines, which are set forth in the Appendix, reduce the burden on a shipper attempting to show market dominance by putting the burden of proof on the railroads to demonstrate the existence of effective geographic or product competition. This is accomplished by providing (i) that the mere existence of geographic or product competition will not, by itself, establish the existence of effective competition, and (ii) by placing the burden of proof on the railroads that receiver or producer alternatives effectively restrain their pricing. The guidelines also summarize and clarify our product and geographic competition guidelines.

**DATES:** This decision will be effective on December 6, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Louis E. Gitomer (202) 275-7245.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 24, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,  
*Secretary.*

#### Appendix—The Market Dominance Guidelines as Modified in This Proceeding

Sections (1)-(6) below indicate the type of evidence we consider important and establish certain burdens of proof. Protestants/complainants should also use these guidelines for preparation of rebuttal evidence.

1. *Intramodal competition*—Intramodal competition refers to



competition between two or more railroads transporting the same commodity between the same origin and destination. A shipper has rail alternatives when, for a given purpose, it can be served by more than one railroad or combination of different railroads. The degree to which these alternatives compete with one another depends on such factors as:

- (1) The number of rail alternatives;
- (2) The feasibility of each alternative as evidenced by:

(a) Physical characteristics of the route associated with each alternative that are indicative of the feasibility of using that alternative for the traffic in question (e.g., circuitry, track conditions, et cetera); and

(b) The direct access of both the shipper and the receiver to each of the rail alternatives as evidenced by individual rail sidings, neutral terminal companies, or reciprocal switching; or, if direct access is not available, then the feasibility of using local trucking to transport the commodity to or from terminals;

(3) The transportation costs associated with each alternative (to determine if actual use of alternatives is due to excessive rates charged by the rail carrier in question);

(4) Collective ratemaking among the railroads in question as evidenced by rate bureau involvement; and

(5) Evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to October 1, 1980).

These factors should be considered in connection with the preparation and submission of evidence pertaining to the presence or absence of effective intramodal competition. This list is neither exhaustive nor mandatory but provides a general indication of the type of evidence that would be appropriate.

#### 2. *Intermodal competition.*—

Intermodal competition refers to competition between rail carriers and other modes for the transportation of a particular product between the same origin and destination. Motor and water carriage are the main sources of intermodal competition for railroads.

a. *Water carriage.*—Water carriage is restricted to certain geographic areas and is generally used for commodities moving in bulk. The evidence required to demonstrate effective competition between rail and water alternatives is in many respects similar to that required for intramodal competition among rail carriers. Parties in a rate case should

provide evidence along the following lines:

- (1) The number of alternatives involving different carriers;
- (2) The feasibility of each alternative as evidenced by:

(a) Pertinent physical characteristics, for the product in question, of the transportation or routing associated with each alternative;

(b) The access of both the shipper and receiver to each alternative; and

(c) The transportation costs of each alternative.

Again, these factors are not exhaustive.

b. *Motor carriage.*—Unlike rail or water alternatives, the availability of many motor carrier alternatives for transportation services between two points can, in most instances, be taken for granted. Therefore, the feasibility of using motor carriage as an alternative to rail may be viewed as depending exclusively on the nature of the product and the needs of the shipper or receiver. Effective competition from motor carriage may be deduced from the following types of evidence:

(1) The amount of the product in question that is transported by motor carrier where rail alternatives are available;

(2) The amount of the product that is transported by motor carrier under transportation circumstances (e.g., shipment size and distance) similar to rail;

(3) The amount of the product that is transported using motor carrier by shippers with similar needs (distributional, inventory, et cetera) as the shipper protesting the rate;

(4) Physical characteristics of the product in question that may preclude transportation by motor carrier; and

(5) The transportation costs of the rail and motor carrier alternatives.

Other types of evidence on the feasibility or nonfeasibility of motor carriage as an alternative to rail will also be considered.

3. *Geographic Competition.*—In determining whether geographic competition provides effective competition for a particular rail service, the Commission shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) The number of alternative geographical sources of supply or alternative destinations available to the originator or receiver for the product in question;

(b) The number of these alternative sources or destinations served by different carriers;

(c) The suitability of the product available for each such source or required by each such destination;

(d) The operational and economic feasibility and relative costs of transportation services from alternative sources or to alternative destinations, including, but not limited to, the consideration of: distance of sources or destinations, physical characteristics of the routes, and transportation costs of each alternative.

(e) The accessibility of each such transportation alternative;

(f) The capacity of each source to supply the product in question or the capacity of each such destination to absorb the product in question; and

(g) Evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to October 1, 1980).

4. *Product Competition.*—In determining whether product competition provides effective competition for particular rail service, the Commission shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) The substitutability and availability of the substitute products;

(b) The relative costs of using the substitute products; and

(c) The prices, efficiency, and explicit and implicit transportation costs of the substitute product(s) relative to the product in question.

(5) The fact that a railroad faces geographic or product competition with respect to a receiver would not, in and of itself, establish the existence of effective geographic or product competition vis-a-vis an originator, and the fact that a railroad faces geographic or product competition vis-a-vis an originator would not, in and of itself, establish the existence of effective geographic or product competition vis-a-vis a receiver. In any individual rate case, a railroad seeking to establish that receiver alternatives effectively restrain railroads vis-a-vis originators, or that originator alternatives effectively restrain railroads vis-a-vis receivers, would bear the burden of proof as to that issue.

(6) The burden of proving the existence of effective geographic or product competition shall in all cases be borne by the railroads.

[FR Doc. 85-26422 Filed 11-5-85; 8:45 am]

BILLING CODE 7035-01-M



## DEPARTMENT OF LABOR

## Office of Pension and Welfare Benefit Programs

(Application No. D-5905, et al.)

## Proposed Exemptions; Plessey Dynamics, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

## Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this *Federal Register* Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

## Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the *Federal Register* and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section

4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

## Plessey Dynamics Employees Retirement Plan (the Plan) Located in Hillside, New Jersey

(Application No. D-5905)

## Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 408(a), 408(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past and proposed leasing of two improved parcels of real property (collectively, the Properties) by the Plan to Plessey Dynamics Corporation (the Employer), the sponsor of the Plan and a party in interest with respect to the Plan, provided that the terms and conditions of such leasing were and are at least as favorable to the Plan as those obtainable by the Plan in like transactions with unrelated parties.

Effective date: If granted, the exemption will be effective December 5, 1984.

## Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which had 236 participants and net assets of approximately \$3,025,484 as of March 31, 1984. The trustees (the Trustees) of the Plan are Messrs. John Kulish, Ernest Hildenbrand and Samuel J. Marantz, two of whom are current officers or employees of the Employer and one of whom is a retired officer or employee of the Employer. Investment decisions for the Plan are made by the Trustees. The Employer is a

manufacturer of parts for the aerospace and defense industries.

2. On October 1, 1965, the Plan purchased an approximately one-half acre parcel of improved real property located at 1420 Chestnut Avenue, Hillside, New Jersey (the 1420 Property), from unrelated parties for cash in the amount of \$138,000. The improvements consist of an approximately 30 year old single-story, brick, block and steel industrial building, about 40 percent of which is finished as office space. The remainder of the building is used as a fabrication area and as a laboratory area. Land area not occupied by the building is paved and used for parking. On the same date, the Plan entered into a ten-year triple net lease (the 1420 Lease) of the property to the Employer at a rental rate of \$12,780 per annum, and with a right of first refusal exercisable by the employer at the offer price if the Plan received an offer for the property from a third party during the lease term. The terms of the lease required the Employer, as lessor, to pay all taxes, insurance and maintenance cost, in addition to all repair costs, including those incurred with respect to the outside of the building. On September 30, 1975, the 1420 Lease was renewed at a rental rate of \$17,000 per annum, for an eight-year term ending on September 30, 1983.

On September 28, 1983, the Trustees agreed in writing to continue to rent the property to the Employer on a month-to-month basis, pending the approval of an exemption by the Department of Labor, at a monthly rental of \$1,541.67, which is equivalent to \$18,500.04 per annum. The agreement also provided for increased public liability insurance, but otherwise incorporated all other terms and conditions of the original 1420 Lease. The Plan continued to rent the 1420 Property to the Employer on a month-to-month basis, at a rental of \$1,541.67 per month, until December 5, 1984.

On November 17, 1983, the 1420 Property was appraised by Dale R. Kirkpatrick, M.A.I. (Mr. Kirkpatrick) of Fairlawn, New Jersey, who determined the fair market rental value of the 1420 Property as of that date to be \$30,000 per annum, or \$2,500 per month. Mr. Kirkpatrick also determined its fair market value as of that date to be \$240,000. Mr. Kirkpatrick is independent of the Employer.

3. On October 2, 1967, the Plan purchased an adjacent approximately one-half acre parcel of improved real property located at 1416 Chestnut Avenue, Hillside, New Jersey (the 1416 Property), from unrelated parties for cash in the amount of \$118,000.



Improvements to the 1416 Property consist of an approximately 30 year old single-story industrial style building with a small second-story rear addition. The area to the rear of the building is paved and used for parking. On that date also, the Plan entered into a ten-year triple net lease (the 1416 Lease) of this property to the Employer at an annual rental rate of \$11,600 and with a right of first refusal exercisable by the Employer at the offer price in the event the Plan received an offer from a third party. The terms of the 1420 Lease regarding the responsibilities of the Employer as lessor are identical to those in the 1420 Lease. This lease was renewed at the same rental rate on October 1, 1977, for a six-year term ending on October 1, 1983. On September 28, 1983, the Trustees agreed to continue the lease of the 1416 Property to the Employer on a month-to-month basis at a monthly rental rate of \$1667.67, which is equivalent to \$20,012.04 annually. Except for the increased rental rate and increased public liability insurance, this agreement incorporated all terms and conditions of the original 1416 Lease. The Plan continued to lease the 1416 Property to the Employer on a month-to-month basis, at a rental of \$1,667.67 per month, until December 5, 1984.

The 1416 Property was also appraised by Mr. Kirkpatrick on November 17, 1983, who determined its fair market rental value on that date to be \$50,300 per annum. Mr. Kirkpatrick also determined its fair market value as of that date to be \$411,000. The applicants state that the large increase in the fair market value and rental value of the 1416 Property was primarily attributable to substantial improvements made to the 1416 Property by the Employer between October 2, 1977 and October 1, 1982, when the 1416 Property was converted from industrial usage to office space through the installation of walls, new lighting, ceiling tiles, air conditioning and wall-to-wall carpeting. The total cost of the conversion was \$96,138, all of which was paid by the Employer.

4. On December 5, 1984, the Plan and the Employer entered into retroactively effective two-year extensions of the 1420 Lease and the 1416 Lease, with a one-year renewal option. The lease extensions for both Properties are incorporated in a single document (the Lease Extension), and are effective as of October 1, 1983, with respect to the 1420 Property and as of October 2, 1983, with respect to the 1416 Property. The one-year renewal option was subsequently exercised by the Employer, making the Lease Extension effective until

September 30, 1986, and October 1, 1986, respectively. The terms of the Lease Extension require rental of \$30,000 per annum for the 1420 Property and \$50,300 per annum for the 1416 Property, which are the amounts determined to be the fair market rental values of the Properties, as of November 17, 1983, by Mr. Kirkpatrick. In addition to requiring payment of the full fair market rental values of the Properties, the Lease Extension provides that upon its termination, all equipment brought into the 1416 Property in connection with its conversion from industrial to office usage, including all partitions, lighting, ceiling tiles, wall-to-wall carpeting and air-conditioning equipment, but excluding all trade fixtures, desks and other furniture and furnishings, shall become the property of the Plan and shall remain in the premises. Except for these changes and a requirement that the Employer carry increased public liability insurance for both Properties, the Lease Extension incorporates the terms and conditions of the prior leases.<sup>1</sup>

5. The applicants believe that the prior leases were covered until December 1, 1983, with respect to the 1420 Lease and until December 2, 1983, with respect to the 1416 Lease, by the exemptive relief provided in section 414(c)(2) of the Act.<sup>2</sup> The applicants represent that they will pay any excise taxes due with respect to the leases for the period between these dates and December 5, 1984, the date on which the current Lease Extension was executed, within 60 days of the date of a grant of this exemption in the Federal Register, as well as any back rental and interest on such rental as determined to be due to by the independent fiduciary for the Plan (see below).

6. Leonard D. Furman, Esq. (Mr. Furman), of the law firm of Levin & Furman, East Brunswick, New Jersey, was appointed as an independent fiduciary for the Plan in September, 1983. Mr. Furman is independent of the Employer and its principals and is an attorney and certified public accountant practicing almost exclusively in the field of income taxation, pensions and estate tax. Mr. Furman states that he understands and is aware of his duties and liabilities as an independent fiduciary under the Act. Mr. Furman represents that, prior to the December 5, 1984 execution of the Lease Extension,

he reviewed its terms and conditions, the appraisals of the Properties and the needs of the Plan, including its needs for liquidity, diversification and a favorable rate of return, and determined that the Lease Extension was appropriate for and in the best interest of the Plan. Mr. Furman also approved the Employer's exercise of the one-year renewal option under the Lease Extension. Mr. Furman has monitored the Employer's compliance with the terms and conditions of the Lease Extension and has been prepared to enforce the terms of the Lease Extension on the Plan's behalf.

7. On September 13, 1985, the Employer and the Trustees executed an amendment (the Amendment) to the Lease Extension. The Amendment was reviewed and approved by Mr. Furman, as the independent fiduciary for the Plan, prior to its execution. The Amendment provides the Employer with three renewal options, not to exceed five years each, with the exercise of each such renewal option to be subject to the approval of the independent fiduciary for the Plan. The first such renewal period will commence on October 1, 1986 with respect to the 1420 Property, and on October 2, 1986 with respect to the 1416 Property. Rental under any renewal period will be the fair market rental value of the Properties as determined within a reasonable time prior to the exercise of the renewal option by an independent M.A.I. appraiser selected by the Plan's independent fiduciary. The Amendment also provides the independent fiduciary with the authority to require the modification, for the renewal periods, of any other terms of the Lease Extension, if he deems such modification(s) to be in the Plan's best interest.

8. Mr. Furman states that the Lease Extension and the Amendment are appropriate for, protective of and in the best interest of the Plan because they are triple net leases which permit the Plan to receive a net return of 12.33% per annum, based on the most recently made appraisals of the fair market values of the Properties. In addition, Mr. Furman notes that Mr. Kirkpatrick, in both of his appraisals of the Properties, states that "... the rising rental market in Hillside and the resulting potential for increasing return on investment suggest the retention of the subject property as an investment vehicle in preference to sale at the present time." Mr. Furman states that the Plan appears to have sufficient liquidity and that the Properties constitute approximately 17% of the Plan's portfolio, the remainder of which is invested in cash equivalents,

<sup>1</sup> No exemption is being provided for the possible future sales of the Properties to the Employer pursuant to the right of first refusal provisions in the prior leases.

<sup>2</sup> The Department expresses no opinion as to whether the requirements of section 414(c)(2) of the Act were met with respect to these leases.



government and corporate bonds, preferred stock and equities. Mr. Furman states that the Plan is protected in that prior to the exercise of any renewal option pursuant to the Amendment, he will determine whether such renewal is in the best interest of the Plan and its participants and will select an independent M.A.I. appraiser to determine the fair market rental values of the Properties. These values will be the rental rates under any such renewal. Mr. Furman will monitor the Employer's compliance with all terms and conditions of the Lease Extension and Amendment, will make any decisions required on behalf of the Plan with respect thereto, and will take any enforcement actions necessary to protect the rights of the Plan and its participants with respect to the Lease Extension and Amendment.

9. In summary, the applicant represents that the transactions meet the statutory criteria of section 408(a) of the Act because: (a) the rental under the leases is the fair market rental value of the Properties as determined at least once every five years by an independent M.A.I. appraiser selected by the independent fiduciary for the Plan; (b) any renewal of the leases after December 4, 1984, either has been or will be reviewed by and subject to the approval of the independent fiduciary for the Plan; and (c) the Plan's independent fiduciary has reviewed the terms and conditions of the Lease Extension and Amendment, the appraisals of the Properties made by an independent M.A.I. appraiser and the needs of the Plan, including its needs for liquidity, diversification and a favorable rate of return, and has determined that the Lease Extension and Amendment are appropriate for, protective of and in the best interest of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

#### First Hawaiian Bank (FHB) Located in Honolulu, Hawaii

[Application No. D-3613]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) as follows:

(I) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code,

by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the past and proposed sale, exchange or transfer between FHB and certain employee benefit plans (the Plans) of multi-family residential and commercial mortgage loans (the Mortgages) or participation interests therein (the Participation Interests) which are originated by FHB provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of FHB who has authority to manage or control those Plan assets being invested in Mortgages or Participation Interests;

B. The terms of all transactions between the Plans and FHB involving the Mortgages or Participation Interests are not less favorable to the Plans than the terms generally available in arm's length transactions between unrelated parties;

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to FHB with regard to such sale, exchange or transfer;

D. The decision to invest in a Mortgage or Participation Interest is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of FHB, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan; and

E. FHB shall maintain for the duration of any Mortgage or Participation Interest which is sold to the Plans pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

(II) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to the Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act) solely because of the ownership of

a Mortgage or Participation Interest by such Plan.

#### Summary of Facts and Representations

1. FHB is a wholly-owned subsidiary of First Hawaiian, Inc. (FHI), a publicly-held corporation. The stocks of FHI are traded on the over-the-counter market. FHI is a registered bank holding company under the Bank Holding Company Act of 1956. FHB is a full service bank conducting general commercial and savings bank business and offering trust services. Its investments consist of commercial, agricultural, real estate (both construction and permanent mortgage) and consumer loans as well as foreign loans and lease financing. FHB is chartered under the laws of the State of Hawaii and is regulated and audited by the Bank Examiner of the Hawaii Department of Commerce and Consumer Affairs. Deposits in FHB are insured by the Federal Deposit Insurance Corporation, and FHB is subject to the regulations and audits for member banks. As of December 31, 1984, FHB had assets totaling \$2,592,973,000. FHI, as of the same date, had assets of \$2,772,070,000.

Since January 1, 1975, FHB, as a custodial trustee, has sold Participation Interests and Mortgages to the Hawaii Carpenters Pension Trust Fund (the Fund) and to other investors. The Mortgages and Participation Interests sold by FHB to the Fund have consisted of construction and permanent first mortgage loans originated by FHB in the ordinary course of its business. It is anticipated that any prospective transactions with FHB will include the Fund as well as the following employee benefit plans over which FHB is or may in the future serve as a custodial trustee: Hawaii Laborers Pension Trust Fund; Hotel Union and Hotel Industry of Hawaii Pension Trust; Hawaii Structural Ironworkers Pension Trust Fund; Hawaii Masons and Plasterers Pension Trust Fund; Hawaii Reinforcing Ironworkers Pension Trust Fund; Roofers Union Local 221 Pension Trust Fund; Pacific Electrical Contractors Association—International Brotherhood of Electrical Workers Pension Trust Fund; Glaziers, Architectural Metal & Glassworkers Pension Trust Fund; and The Hotel Industry—I.L.W.U. Pension Trust Fund. The transactions with the above referenced Plans will also involve Mortgages and Participation Interests that are similar to those previously acquired.

2. FHB sells either the entire Mortgage or a Participation Interest to the Plans. In a participation arrangement, FHB



typically retains a 10 percent to 25 percent interest in the Mortgage. With respect to a loan for which retroactive relief is being requested on behalf of the Fund, FHB has retained a 32 percent interest.

3. As stated above, FHB has a pre-existing relationship with the Plans as a custodial trustee, a position which does not provide FHB with any discretionary authority with regard to investment of the Plan's assets. This limitation on FHB's discretionary authority is expressly set forth in the Trust Agreement between the Plans and FHB. Additionally, as a result of servicing the Mortgages and Participation Interests previously acquired by the Plans, FHB became a party in interest to the Plans so that any subsequent sale of Mortgages or Participation Interests would constitute a prohibited transaction under section 406(a) of the Act. The applicant represents that the transactions do not involve a conflict of interest or present a situation where advantage can be taken of the Plans or the trustees of the Plans because all decisions regarding investment in the Mortgages or Participation Interests are made by Plan fiduciaries who are independent of FHB.<sup>1</sup>

4. FHB initiates a Mortgage by reviewing a loan application from a potential mortgagor which includes a mortgage proposal consisting of a summary of facts relating to the loan, setting forth such matters as the terms of the Mortgage, a description of the property securing the Mortgage and an appraisal of the property from a qualified appraiser. FHB has imposed strict underwriting guidelines concerning the applicant's credit worthiness and the value of the collateral which must be satisfied before any decision is made to fund a Mortgage. Once assembled and verified, all mortgage applications between \$100,000 to \$500,000 are presented to the HFB's Loan Committee, consisting of twelve officers of FHB, who determine whether a proposed Mortgage is a good

risk and should be approved. Mortgage requests in excess of \$500,000 are reviewed by an Executive Committee consisting of eight officers and directors of FHB. If a loan application is approved, FHB makes a preliminary commitment to the mortgagor. The commitment becomes binding after FHB presents a mortgage package to investors (typically savings and loan institutions, pension plans,<sup>2</sup> or other financial institutions or federal agencies such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation) and the investors agree to purchase Mortgages or Participation Interests.

5. Generally, the average loan to value ratio has not exceeded 75 percent for the Mortgages. In the event a greater loan to value ratio is warranted, commercial loan insurance would be required. The yield provided by the Mortgages or Participation Interests has been and will continue to be the prevailing rate on comparable mortgages at the time of sale.

6. In most cases, the Mortgages or Participation Interests previously sold to the Plans have had excellent payment histories, with no Plan experiencing any losses except in one instance. The aforementioned Mortgage, in the original amount of \$13.2 million and involving the Fund, represented a construction loan made by FHB to Kona Pacific Partners (Kona), an unrelated borrower, on December 21, 1979. The loan carried interest at a floating rate per annum equal to 2½ percent above the prime interest rate charged by FHB on prime commercial short-term credits to large borrowers. The loan was for a term of 18 months and had an optional 6 month extension. The loan was primarily secured by a first mortgage on a 126 unit condominium project located in Kailua-Kona, Hawaii. The collateral, which was valued by John Child and Co., Inc., an unrelated entity, had an appraised value of \$17.7 million.

On December 21, 1979, the Fund acquired a 30 percent Participation Interest in the construction loan for \$4 million. FHB retained a 32 percent Participation Interest valued at \$4.2

million. The remaining Participation Interests were sold to two unrelated entities.

On December 1, 1981, Kona defaulted on the construction loan. At that time, the Fund had received total principal and interest payments of \$2,708,123. There was also an undrawn balance of \$5,205. In addition, the Fund was owed an interest payment of \$32,827 for December 1981.

The Fund learned of the default on December 21, 1981. At that time, Kona made a written request to the lenders for an extension of the construction loan but the request was denied. Therefore, on behalf of the other participating lenders and at their direction, FHB, in accordance with the strategy agreed to among the lenders, pursued solutions to the default. A collective agreement was subsequently reached among the parties as to the appropriate course of action. In reaching consensus, the Fund trustees represented the Funds' interests and they participated in the discussions and decisions of the lenders.

On February 16, 1983, a foreclosure complaint was filed by the lenders in the Circuit Court of the Third Circuit of the State of Hawaii (the Court). On September 6, 1983, the Court granted a motion for partial Summary Judgment and Decree of Foreclosure. The Court confirmed the motion on November 8, 1983. (According to the exemption application, at the time the foreclosure decree was granted, the Fund's Participation Interest in the construction loan carried a total outstanding principal balance of \$2,060,348 and total accrued interest of \$613,401.)

On April 11, 1984, a foreclosure sale was held and a bid price of \$6.9 million was approved. The net amount recovered by the Fund in proportion of its interest was \$2,087,902. In lieu of additional cash, the Fund received 15.85 units in the already completed Kona Pacific condominiums.

According to the exemption application, the appraised value of the condominium units has allowed full recovery of the principal due on the loan but there remains delinquent interest in the amount of \$585,847 still owed the Fund. With respect to recovering back interest, the exemption application states that although the Fund trustees intend to hold onto the units until they can be sold at or above their appraised value, prospects are minimal that the sale will allow a substantial recovery of the delinquent interest.<sup>3</sup> In the interim,

<sup>1</sup> While stating affirmatively that FHB would not make investment decisions regarding the Mortgages or Participation Interests, the exemption application states that in some situations it is possible that investment decisions have been or will be made by trustees of the Plans. The Department notes that where the construction on the property which secures the Mortgage was by a contributing employer to the Plan and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the Mortgage, a separate prohibited transaction under section 406(b) of the Act may occur, which transaction would not be covered by this exemption. See also condition D of Part I of this exemption which has the effect of precluding relief under section 406(a) of the Act for certain transactions undertaken for the benefit of parties in interest.

<sup>2</sup> The Department notes that the application does not address the separate prohibited transactions under section 406(a)(1)(B) of the Act which would exist should any of the Mortgages originated by FHB and subsequently purchased by the Plans involve loans to any party in interest with respect to the purchasing Plan. Accordingly, no relief is afforded by this proposed exemption for such transactions. However, FHB will request from the date of the grant of this exemption potential borrowers to list in their loan application their relationship to any pension plan in an effort to assist a potential purchasing plan in determining whether the borrower may be a party in interest.

<sup>3</sup> As stated above, the scope of this proposed exemption is limited to the sale, exchange or



the exemption application states, the units are earning net rental income of approximately \$6,000 per month.

7. The Plans have paid no investment management, investment advisory, sales commission or similar fee to FHB with respect to the acquisition or sale of the Mortgages or Participation Interests. The applicant represents that the Plans have paid no more for the Mortgages or Participation Interests than have been or would be paid by an unrelated party in an arm's length transaction.

8. All transactions relating to the Mortgages or the Participation Interests are controlled by a servicing agreement (the Servicing Agreement) if a Mortgage is sold, or by a participation agreement (the Participation Agreement) if a Participation Interest is sold. FHB represents these agreements are typical of the agreements routinely used by banks.<sup>4</sup> The Servicing Agreement or the Participation Agreement has been submitted to Plan fiduciaries for their review prior to the Plan's purchase of a Mortgage or Participation Interest. At the time of sale, FHB, pursuant to the Servicing Agreement or the Participation Agreement, customarily provides to the Plans the following: (a) The Mortgage or Participation Interest therein evidencing a first lien on fee simple absolute title or leasehold title to the mortgaged property; (b) an American Land Title Association form of mortgagee's title insurance policy for the benefit of the Plan to the extent of the Plan's interest; (c) all relevant security agreements; (d) an appraisal report on the mortgaged property; and (e) insurance policies providing coverage for fire and other hazards maintained on the mortgaged property to the extent of the Plan's interest.

Further, in said agreements, FHB has agreed to originate, administer and service the Mortgages and Participation Interests in accordance with the due diligence standards and procedures and practices generally observed and followed by it with respect to all Mortgage and Participation Interest transactions.

9. FHB's duties under the Servicing Agreement and the Participation Agreement include the following: (a) To collect all payments under the

Mortgages or Participation Interests as they become due; (b) to deposit all funds received on behalf of each Mortgage or Participation Interest in a separate account on behalf of the relevant Plan and to apply properly all sums collected by and on account of each such Mortgage or Participation Interest to principal and interest, lease rent, taxes, assessments, other public charges, repairs and maintenance and hazard and fire and mortgage insurance premiums; (c) to submit to the relevant Plan, at least annually, an audit of the balance in each Plan's account together with a certification that all disbursements were made for proper purposes as well as to make available for inspection by the Plan any records maintained with respect to the Mortgage or Participation Interest; (d) to retain physical possession of the mortgage instruments; and (e) upon default on a Mortgage, to give prompt notice of default to the Plan, to foreclose upon the property, or purchase the mortgaged property at a foreclosure of commissioner's sale and, if necessary, maintain or dispose of the property so acquired.<sup>5</sup> FHB is not entitled to additional compensation during its management of the mortgaged property. Decisions regarding foreclosure options and determinations as to property management are made on behalf of the Plans by persons independent of FHB.

10. FHB's compensation for servicing the Mortgages and Participation Interests is agreed to at the time each Mortgage or Participation Interest is accepted by the Plan. The applicant represents the FHB's servicing fee is determined on the same basis as are the fees charged investors other than the Plan who similarly invest in the Mortgages and Participation Interests. Also, FHB's fee is consistent with servicing fees charged throughout the United States for similar services.

11. It is understood by the parties to the Servicing Agreement and the Participation Agreement the the sale of a Mortgage or Participation Interest shall be without recourse. However, the Servicing Agreement and Participation Agreement state that in the event of a default on any Mortgage, FHB may repurchase from the Plan a Mortgage or

Participation Interest plus interest to the date of such repurchase.

12. FHB represents that as a result of being a party in interest with respect to a Plan by virtue of servicing the Mortgages it would be prohibited from engaging in other commercial transactions with a Plan, such such as the making of loans, which have nothing to do with the mortgages or Participation Interests held by a Plan. The Department has considered FHB's request for such transactions and has decided that because the servicing relationship is established as a necessary result of the prior purchase of a Mortgage or Participation Interest by a Plan, subsequent transactions between FHB and the Plans otherwise prohibited by section 406(a), are not likely to present an inherent abuse potential. Accordingly, the Department has determined it would be appropriate to propose the relief from section 406(a) contained in Part II of the proposed exemption.

13. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The transactions were and will be between the Plans and FHB (a federally regulated institution) and are transactions made in the regular course of FHB's business; (b) all Plan decisions to invest in Mortgages and Participation Interests were and will be made by Plan fiduciaries who who are independent of FHB; (c) the Plans have paid no more for the Mortgages or Participation Interests than would be paid be an unrelated party in an arm's length transaction; (d) FHB's servicing fee has been and will continue to be similar to fees charged other investors in Mortgages or Participation Interests and have been and will be consistent with that charged in the open market; (e) the Mortgages were and will be all first liens on commercial and multi-family residential property; (f) FHB has and will continue to provide written warranties and representations regarding the Mortgages and Participation Interests; and (g) in all but one instance, the Mortgages and Participation Interests which have been sold by FHB to the Plans, have had a long term history of successful repayment.

#### Notice to Interested Persons

In addition to the notice requirement outlined in the general provisions of this notice, FHB agrees to provide copy of the notice of proposed exemption and any subsequent grant of such exemption to all employee benefit plans with whom FHB may contract in the future to

<sup>4</sup> transfer of Mortgages and Participation Interests between FHB and the Plans. This exemption does not extend to any other violations of Part 4 of Title I of the Act which may have occurred by reason of the Fund's acquisition of the Participation Interest in the Kona loan.

<sup>5</sup> No exemption from section 406 of the Act is being granted for transactions pursuant to the Servicing Agreement or Participation Agreement beyond that which is provided by the statutory exemption pursuant to section 406(b)(2) of the Act.

<sup>6</sup> The Department notes that the application does not address the separate prohibited transaction under section 406 (a)(1)(A) of the Act which would exist where upon foreclosure the Plan acquires title to real property and such property or a portion thereof is leased to a party in interest with respect to the plan. Moreover, if the party in interest under such lease is an employer of employees covered by the Plan, the acquisition of employer real property which may violate provisions of section 408(a)(2) and 407 of the Act. Accordingly, no relief is afforded by this proposed exemption for such transactions.



provide services as described herein. Such notification will be provided prior to FHB's entering into a contract to provide such services.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**James R. Schwebel & Associates, P.A.  
Profit Sharing Plan and Trust (the Plan)  
Located in Minneapolis, Minnesota**

[Application No. D-6055]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of a parcel of improved real property (the Property) to Mr. James R. Schwebel (Mr. Schwebel), a disqualified person with respect to the Plan, for a sales price equal to the higher of the fair market value as determined by an independent appraiser on the date of such Sale or the total expenditures incurred by a money purchase plan (the Money Purchase Plan) in connection with the acquisition of the Property and by the Plan in the holding of the Property as calculated on the day of the Sale.

#### **Summary of Facts and Representations**

1. The Plan is a defined contribution profit sharing plan with one participant, Mr. Schwebel, and assets of \$408,196 as of December 31, 1984. Mr. Schwebel is the principal shareholder of Schwebel, Sieben & Hanson, P.A. (previously James R. Schwebel & Associates, P.A.), a professional corporation engaged in the practice of law, and the employer and sponsor of the Plan (the Employer). Mr. Schwebel also serves as an officer and director of the Employer and as trustee for the Money Purchase Plan and the Plan (the Plans). The Plan was terminated on July 31, 1978, and all participants with the exception of Mr. Schwebel received distributions. The Money Purchase Plan, which was also sponsored by the Employer and which was also terminated July 31, 1978, had in 1982 originally acquired a vendor's interest in a contract for deed (the Contract) on the Property through the investment of assets retained in its frozen trust. It is represented that the Plan subsequently acquired its interest in the Property through its merger (the

Merger) in 1984 with the Money Purchase Plan.<sup>1</sup> Accordingly, it is represented that the Plan is currently the owner of the Property subject to a VA sponsored first mortgage (the Mortgage).

2. Mr. Schwebel proposes to purchase the Property from the Plan for a cash amount determined on the date of Sale at the higher of: (a) Its appraised market value; or (b) the total expenditures incurred by the Plan and the Money Purchase Plan in connection with the acquisition and holding of the Property.<sup>2</sup> It is represented that the Plan will incur no real estate commissions or fees in connection with the Sale.

3. The Property consists of a detached two family dwelling located at 5028 Hiawatha Avenue, Minneapolis, Minnesota. Approximately one month prior to the Money Purchase Plan's acquisition of the Contract, Mr. Clarence W. Sutton (Mr. Sutton) purchased the underlying Property from Ms. Sharon Rundquist (Ms. Rundquist) for a total sales price of \$129,900. At the time, the Property was subject to the Mortgage of approximately \$32,000 in favor of United Mortgage Corporation of Minneapolis which was subsequently assigned to First United Mortgage of San Diego. It is represented that Mr. Sutton paid earnest money of \$13,000 to Ms. Rundquist, and delivered the Contract in the amount of \$116,900 which wrapped Mr. Sutton's assumption of the Mortgage with the Contract amount of \$84,900.

On September 1, 1982, the Money Purchase Plan acquired the Contract at a 25% discount from the Contract amount of \$84,900. The Money Purchase Plan paid \$63,675 plus additional interest of \$633.67 for a total purchase price of \$64,308.67 (the Purchase Price) for the Contract. It is represented that Ms. Rundquist and her father, Mr. Sutton, are unrelated third parties with respect to the Plans or to Mr. Schwebel.

On August 1, 1983, Mr. Sutton defaulted on the Contract after having made eleven payments to the Money Purchase Plan at \$1,169.90 per month totalling \$12,859.00 and consisting of \$439.92 a month payment on the

Mortgage and the remainder on the Contract. Upon default by Mr. Sutton, Mr. Schwebel, as trustee for the Money Purchase Plan, cancelled the Contract, but the Money Purchase Plan continued to make payments of \$439.92 on the Mortgage. Mr. Schwebel represents that both Ms. Rundquist and Mr. Sutton are or were judgment-proof. Accordingly, no legal action has been filed by Mr. Schwebel.

On November 27, 1984, the Money Purchase Plan and the Plan filed Form 5310 with the Internal Revenue Service in order to merge the Money Purchase Plan into the Plan for administrative convenience.

For the twenty-nine month period between October 1982 until March 1985, the Money Purchase Plan and the Plan have collectively paid \$12,757.68 in monthly installments on the Mortgage.

In addition, the Plans have paid \$2,002.81 for maintenance, insurance, and utilities for the Property from September, 1983 until March, 1985, and have paid real estate taxes of \$1,029.10 for a total of taxes, maintenance, insurance, and utilities of \$3,031.91. In order to determine on the date of the Sale the total expenditures incurred by the Plan and the Money Purchase Plan in acquiring and holding the Property, the applicant proposes to aggregate the amount of the Purchase Price and the total of the monthly installments paid by the Plan and the Money Purchase Plan on the Mortgage (the Mortgage Payments) plus the total of the taxes, maintenance, insurance, and utilities costs to the Plans (the Outlays). As of March 1985, the total expenditures were approximately \$80,098.26.

It is represented that Mr. Schwebel will assume the obligation to make monthly payments on the Mortgage and will pay all costs to assume the Mortgage. Further, it is represented that the Plan will be released from any obligation to make payments on the Mortgage after the Sale.

4. On January 25, 1985, Mr. James M. Martin (Mr. Martin), MAI, SRPA, of Johnson, Child, Martin & Assoc. Inc., 5353 Wayzata Blvd., Minneapolis, Minnesota, appraised the Property. Mr. Martin has determined the current market value of \$87,000 for the Property in "as is" condition. Mr. Martin estimated the cost of cleaning, repairing, and decorating the Property at \$2,000, and the price of \$1,000 for the purchase of used stoves and refrigerators for the Property.

5. From the date of Mr. Sutton's default, Mr. Schwebel represents that the Property has not been rented, because the Property needs repair and is

<sup>1</sup> It is represented that the Plans prior to the Merger were not disqualified persons with respect to each other under section 4975(e)(2) of the Code such that the transfer of assets from the Money Purchase Plan to the Plan would involve violations of section 4975 of the Code. The Department by this exemption is not proposing relief for any transaction which might involve violations of section 4975 of the Code with respect to the transfer of assets, specifically the Property, from the Money Purchase Plan into the Plan as a result of the Merger of the two Plans.

<sup>2</sup> It is represented that the Sale will not result in a contribution to the Plan such that the limitations set forth in section 415(c) of the Code would be relevant to the subject transaction.



not in a rentable condition. It is represented that the Property has been listed for sale for more than one month at a purchase price of \$69,000, but the Plan has received no offers at this price or any price.

6. In summary, the applicant represents that the proposed Sale meets the statutory criteria of section 4975(c)(2) of the Code because:

- (a) This is a one time transaction for cash;
- (b) The Plan will receive the greater of the fair market value for the Property on the date of Sale as determined by an independent, qualified appraiser or the total expenditures incurred by the Money Purchase Plan and the Plan in connection with the acquisition and holding of the Property as calculated on the day of the Sale by adding the Purchase Price to the Mortgage Payments plus the Outlays; (c) the Plan will incur no real estate commissions or fees in connection with the Sale; (d) the Sale will enable the Plan to divest of an asset which produces no income and invest the proceeds in potentially higher yielding assets; (e) Mr. Schwebel, the only participant in the Plan, desires to consummate the Sale; and (f) Mr. Schwebel will assume the obligation to make monthly payments on the Mortgage, will pay all costs associated with the assumption of the Mortgage, and the Plan will be released of its obligation to make payments on the Mortgage.

Notice to Interested Persons: Because Mr. Schwebel is the sole participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the date of publication of this notice in the Federal Register.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Standard Precast, Inc. Profit Sharing Plan (the Plan) Located in Jacksonville, Florida**

[Application No. D-5947]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and

the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lease of certain real property by the Plan to Standard Precast, Inc. (the Plan Sponsor) provided the terms of the lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective: If granted, the proposed exemption will be effective on December 1, 1984.

#### **Summary of Facts and Representations**

1. The Plan is a profit sharing plan with 28 participants and total assets of \$731,035 as of July 31, 1984. The trustees of the Plan are Mr. Carl W. Peterson and Mrs. Barbara L. Peterson, officers of the Plan Sponsor. The Plan Sponsor is engaged in the business of making precast concrete.

2. The Plan owns a 5.5 acre tract of land and improvements located on Phillips Highway in Jacksonville, Florida (the Property). The Plan purchased the Property in 1974 from an unrelated party at a cost of \$50,000. The Plan leased the Property to the Employer pursuant to a lease executed on June 28, 1974, (the Old Lease). The Old Lease was for a 15-year term. On September 1, 1976, the Old Lease was modified (the Modified Lease). The Modified Lease was for a 5-year term, with one 5-year option to renew.<sup>1</sup>

3. It is now proposed that the Plan continue to lease the Property to the Plan pursuant to a lease which became effective on December 1, 1984 (the New Lease). The New Lease has an initial term of 10 years with two 5-year options to renew. The rental rate is \$1,490 per month, the fair market rental value of the Property as determined by an independent appraiser, with rental adjustments every two years to reflect the fair market rental value of the Property. The Plan Sponsor is responsible for the maintenance and upkeep of the Property, as well as for the payment of insurance, sales taxes and real estate taxes.

4. An appraisal of the Property was performed by an independent appraiser.

<sup>1</sup> The Applicant represents that the Old Lease and the Modified Lease were not prohibited transactions until July 1, 1984 because they were exempted by section 414 of the Act. The Department expresses no opinion as to the applicability of section 414 of the Act in this instance. The applicant further represents that it will pay any excise tax which may be due as a result of the Old Lease and the Modified Lease for the period July 1, 1984 through November 30, 1984 within 60 days of the granting of this proposed exemption.

Robert A. Miles, S.R.S., of Jacksonville, Florida (the Appraiser). The Appraiser established the fair market value of the Property at \$137,500 and the fair market rental value of the Property at \$17,875 per year or \$1,490 per month as of April 18, 1984. The Property represents approximately 18 percent of the total assets of the Plan.

5. Mr. A.B. Blackburn has been appointed the independent trustee (the Independent Trustee) for the New Lease, effective November 30, 1984. The Independent Trustee has made the following representations:

(a) He is an attorney who has been practicing law in Jacksonville, Florida for over 25 years and is familiar with the Act and the liabilities and responsibilities of fiduciaries thereunder.

(b) He is independent of the parties to the proposed transaction.

(c) He has examined the New Lease and its terms and has determined that it is appropriate and suitable for the Plan.

(d) The rent payable for the first two years is equal to the fair market rental value of the Property as determined by a competent appraiser.

(e) He has examined the Appraisal and inspected the Property.

(f) The annual rental income will provide a 13 percent cash return on the current appraised value of the Property and the Property appears to have substantial appreciation potential.

(g) He will monitor the terms of the Lease assuring the prompt and regular payment of the rents.

(h) He will select an independent appraiser to make an appraisal of the Property every two years and adjust the rent to the fair market rental value.

(i) He will determine whether or not the Plan Sponsor may exercise the option to renew the New Lease.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) the Independent Trustee has determined that the New Lease is in the interests of and protective of the Plan and its participants and beneficiaries;

(b) all of the terms of the New Lease are fair market value terms, and

(c) the Appraiser has established the fair market rental value of the Property.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)



**Proposed Extension of Prohibited Transaction Exemption (PTE) 82-184 for Certain Transactions Involving the Alaska Teamster-Employer Pension Trust (the Plan) Located in Anchorage, Alaska**

[Application No. D-6184]

**Proposed Exemption**

The Department is proposing to extend temporarily, PTE 82-184 (47 FR 52246, November 19, 1982) until May 16, 1988. Authority to grant the proposed exemption is given the Department under section 408(a) of the Act, section 4975(c)(2) of the Code and the Procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

If the exemption is granted, the restrictions of section 408(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply until May 16, 1988 to the sales of certain residential units (the Units) located near Palm Springs, California, by Desert Horizons, Inc. (Desert Horizons), a wholly owned corporation of the Plan, to parties in interest to the Plan who are not fiduciaries [within the meaning of section 3(21)(A) of the Act], provided the following conditions are satisfied:

(1) (A) Every thirty days, Desert Horizons shall publish in the *The Desert Sun*, a price list delineating each available Unit and the price at which it is offered for sale to the general public.

(B) For thirty days from the initial publication, no sale of any such advertised Unit shall be made to a party in interest, even if such party offers more than the advertised price.

(C) If, after thirty days from the initial publication, no non-party in interest offers to purchase the Unit, a party in interest shall become an eligible purchaser, but only at the advertised price or at a higher price.

(D) A party in interest shall not be eligible to purchase a Unit whose advertised price has been altered until the expiration of thirty days following publication at the altered price.

(E) All prospective purchasers shall complete a questionnaire indicating whether they are a party in interest with respect to the Plan.

(2) Prior to the execution of a contract for the sale of a Unit to a party in interest, Walker and Lee, Inc. (Walker and Lee), serving as the independent

appraiser for the Plan, shall submit to Mr. Jay D. Wahlin, CPA (Mr. Wahlin), the independent fiduciary, a letter certifying that, based on all relevant market factors, the sales price for the Unit is not less than its fair market value;

(3) No contract for sale of a Unit shall be executed until Mr. Wahlin determines whether the prospective purchaser is a party in interest with respect to the Plan. Upon identification of such party, Mr. Wahlin, having access to all information and documentation that he deems necessary for an informed determination, shall evaluate and approve the proposed transaction, based on determination made that: (i) the published advertisement procedures of condition (1) above, not fully met, and (ii) the terms and conditions of such sales are at least as equal to those that the Plan would receive in a similar transaction with an unrelated party. In the event Mr. Wahlin resigns from his position as independent fiduciary, or if his appointment is otherwise terminated, the Plan shall notify the Department's Office of Regulations and Interpretations of the name and qualifications of a prospective successor fiduciary. Appointment of such successor shall be effective thirty days after receipt of such notification, unless the Department issues a letter to the Plan explaining its objections; and

(4) The Plan or Desert Horizons shall maintain accurate records demonstrating compliance with the conditions of this exemption for all covered transactions.

**Effective Dates:** If granted, this proposed exemption will be effective May 15, 1985. It will expire on May 15, 1988.

**I. Background**

This proposed exemption is requested in an application filed with the Department on May 29, 1985 by Desert Horizons. The application incorporates by reference all facts and representations contained in Exemption Application No. D-2853, which comprised the record underlying PTE 82-184.

As noted above, on November 19, 1982, the Department granted PTE 82-184 which conditionally permitted: (1) the proposed sales of certain residential units located in the Desert Horizons development by Desert Horizons, to parties in interest of the Plan who are

not fiduciaries; and (2) the proposed extensions of credit by the plans to the parties in interest in connection with the sales. PTE 82-184 expired on May 15, 1985. Accordingly, Desert Horizons seeks an extension of the sales portion of this exemption until May 15, 1988.<sup>1</sup> This will enable Desert Horizons to offer the Units to all eligible persons through three additional prime (winter) selling seasons.<sup>2</sup>

**II. Summary of Facts and Representations**

A. The Plan is a defined benefit, collectively-bargained multiemployer pension plan established in 1966 between certain contributing employers and Local Union 959 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union). The Plan is administered by a board of trustees (the Trustees) consisting of four employer and four union representatives. As of July 31, 1985, the Plan had 9,500 participants and total assets of \$414 million. Investment decisions for the Plan are divided primarily between the Trustees and Mercer Meidinger Company.

B. Desert Horizons, which has been wholly owned by the Plan since 1977, is a development and construction company based in California. Initially, Desert Horizons built and marketed 135 residential units (typically priced in the \$235,000 to \$375,000 range) and memberships in an accompanying golf course and clubhouse on 275 acres of land located in Indian Wells, California. Subsequent to the marketing of the Units, Desert Horizons decided to change its policy by constructing model homes and then building Units after

<sup>1</sup> Because of the improved market for second home mortgages, the Plan no longer offers financing to new purchasers of homes at Desert Horizons. According to the exemption application, prospective homebuyers are directed to arrange financing from other sources. The Plan, however, still honors prior loan commitments.

<sup>2</sup> Since PTE 82-184 was granted, there has been only one instance of its utilization. According to the exemption application, it is unclear in this case whether the purchaser was a party in interest. After close scrutiny by the Plan and in the opinion of the Plan's counsel, it was determined that the homebuyer was not a party in interest but merely a service provided to the union affiliated with the Plan. Despite the limited use of the exemption, the Plan fiduciaries believe that prudence dictates that an effort be made to extend the exemption so that Desert Horizons will realize the broadest potential market.



sales has been consummated. To date, approximately 160 Units have been sold.

C. The price for each Unit has been established by Walker and Lee, an unrelated residential real estate company located in Santa Ana, California. Based on extensive market analysis, Walker and Lee has reviewed all properties and priced the Units uniformly. Printed price lists will again be made available to the public and sales personnel will be instructed to sell the Units at the established price. To provide an assurance that parties in interest will not receive concessions from Desert Horizons or the Plan, no sale of a Unit will be made to a party in interest until the Unit has been advertised to the public in the *The Desert Sun* for a period of thirty days after Walker and Lee has determined the Unit's price. If the Unit is not purchased within the requisite time frame by a non-party in interest, a party in interest will become eligible to purchase the Unit, but only at the advertised price or at a higher price. In addition, all prospective purchasers will be required to complete a questionnaire indicating whether or not they are parties in interest.

D. To facilitate sales of the Units during a period of high interest rates and generally depressed housing market conditions, and in an effort to reduce the monthly carrying costs, Desert Horizons formerly offered all prospective purchasers a 12 percent mortgage loan which they were not required to accept. As stated in Footnote One, the Plan no longer offers financing to prospective purchasers due to an improved market for second home mortgages.

E. Mr. Wahlin, who is independent of the Plan and Desert Horizons, will continue serving as the independent fiduciary for the proposed sales transactions. Mr. Wahlin is a CPA who heads his own accounting firm in Palm Desert, California. Mr. Wahlin represents that as a small practitioner, his fiduciary experience and experience in administering the various provisions of the Act are not extensive. Nevertheless, he believes his knowledge of the Act and fiduciary responsibilities is more than adequate. As a tax and financial advisor, Mr. Wahlin states that he deals with implied fiduciary responsibilities and liabilities on a regular basis. In addition, he explains that he has consulted with counsel for the Plan regarding the duties, responsibilities and liabilities imposed

on plan fiduciaries. He further asserts that he understands his duties, responsibilities and liabilities in acting as a fiduciary with respect to the Plan.

Mr. Wahlin states that he has no objection to the continuation of the sales transactions described in PTE 82-184 since it expands the market for the Units. He says this is even more important in light of the President's recent tax proposal which may have the effect of diminishing the market. Mr. Wahlin feels the best interest of the Plan will be met by the sale of current and future inventory at a fair price. He explains this goal can be obtained sooner by allowing a party in interest to purchase a Unit at fair market value.

As the independent fiduciary, Mr. Wahlin will continue having the responsibility for determining whether a prospective buyer is a party in interest. If the party is a party in interest, Mr. Wahlin, having access to all pertinent Desert Horizons' documents necessary to evaluate each transaction, will again be required, prior to sale, to determine that the advertised price procedure has been followed. Then, Mr. Wahlin will certify that the terms and conditions of the transactions do not constitute a price "break" to the party in interest.

F. In summary, it is represented that the proposed transactions will satisfy the terms and conditions of section 408(a) of the Act because: (1) Desert Horizons will have a larger group of potential buyers for the Units; (2) each transaction will be conducted on arm's length terms and certified by Mr. Wahlin, the independent fiduciary for the Plan; and (3) the exemption will facilitate the sale of the Units at their fair market value.

Notice to Interested Persons: Notice of the proposed exemption will be provided to all interested persons by publication in the Alaska Teamster newsletter within 40 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the *Federal Register* and shall inform interested persons of their right to comment. Comments are due within 70 days of the date of publication of the proposed exemption in the *Federal Register*.

For Further Information Contact: Ms. Jan D. Broady, of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Boston Financial Real Estate Equity Group Trust (the Group Trust or Trust)**  
Located in Boston, Massachusetts

[Application No. D-6197]

#### *Proposed Exemption*

#### **Section I. Exemption for Certain Transactions Involving the Group Trust**

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Group Trust: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Group Trust (a Participating Plan) and the Group Trust, or any acquisition or holding by the Group Trust of employer securities or employer real property, if the party in interest is not Boston Financial Real Estate Advisors Limited Partnership (Boston Financial) or one of its affiliates, any other Trust maintained by Boston Financial or one of its affiliates, and it, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of any other Participating Plans maintained by the same employer or employee organization in the Group Trust, does not exceed 10 percent of the total of all assets in the Group Trust.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Group Trust.*

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Group Trust, or any acquisition or holding by the Group Trust of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Group Trust exceeds 10 percent of the total assets in the Group Trust, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."



**(3) Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.**

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Group Trust which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to Boston Financial or to the employer, or any affiliate of Boston Financial or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Group Trust are suitable (or adaptable without excessive cost) for use by different tenants; and

(bb) The property of the Group Trust that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Boston Financial nor any of its affiliates is an affiliate of the issuer of the security; and

(bb) If the security is an obligation of the issuer, either:

1. The Group Trust owns the obligation at the time the plan acquires an interest in the Group Trust, and interests in the Group Trust are offered and redeemed in accordance with valuation procedures of the Trust applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Group Trust not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Boston Financial, its affiliates, and any collective investment fund maintained by Boston Financial or its affiliates, shall be considered to be persons independent of the issuer if Boston Financial is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Boston Financial or its affiliate has investment

discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Boston Financial or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H), or (I) of the Act.

(b) The restrictions of section 406(a)(1) (A) through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

**(1) Certain Leases and Goods.**

The furnishing of goods to the Group Trust by a party-in-interest with respect to Participating Plan or the leasing of real property owned by the Trust to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Trust, if—

(A) In the case of goods, they are furnished to or by the Group Trust in connection with real property owned by the Trust;

(B) The party-in-interest is not Boston Financial, any affiliate of Boston Financial, or one of the other Trusts; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Group Trust with the same party-in-interest, or any affiliate thereof) does not exceed the greater of \$25,000 or 0.5 percent of the fair market value of the assets of the Group Trust on the most recent valuation date of the Trust prior to the transaction.

**(2) Transactions Involving Places of Public Accommodation.**

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Group Trust to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the

Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Group Trust and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H), or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility of influence with respect to the investment of the Participating Plan's assets in, or help by, the Group Trust;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Group Trust, does not exceed 20 percent of the total of all assets in the Trust; and

(3) The person is not Boston Financial or an affiliate of Boston Financial.

(d) The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Group Trust if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of Boston Financial and any of its affiliates, and the applicable conditions of Section III are met.

**Section II. Excess Holdings Exemption for Employee Benefit Plans**

(a) The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Group Trust) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Group Trust; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in section III of this exemption are met.



### Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Boston Financial or its affiliate, the terms of the transaction are not less favorable to the Group Trust than the terms generally available in arm's-length transactions between unrelated parties.

(b) Boston Financial or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Boston Financial or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Group Trust of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of Boston Financial or its affiliate, or commercial or financial information which is privileged or confidential.

### Section IV. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Group Trust" shall include any collective investment fund that may hereafter be established, operated and managed by Boston Financial or its affiliate in essentially the same manner as the Boston Financial Real Estate Equity Group Trust.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled, by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563 (a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Group Trust occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or

acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections (a)(1) and (1)(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Group Trust by the Participating Plan. For this purpose, assets allocated do not include the investment of Trust earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Group Trust which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Group Trust as its proportionate interest in the total assets of the Group Trust as calculated on the most recent preceding valuation date of the Trust.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this proposed exemption.

### Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80-51 (PTE 80-51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicants have requested relief are those which, in part, are the subject of PTE 80-51.

The Department stated in PTE 80-51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case



of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

To date the Department has proposed and granted various individual exemptions on behalf of collective investment funds which have not qualified for relief under PTE 80-51 or Prohibited Transaction Exemption 78-19 (PTE 78-19, 43 FR 59915, December 22, 1978; class relief on behalf of pooled separate accounts sponsored by insurance companies). Such individual exemptions have provided relief for similar transactions subject to, in most instances, similar terms and conditions as those contained in the class exemptions.

#### Summary of Facts and Representations

1. The Group Trust was established as of April 30, 1985, as a group trust described in Rev. Rul. 81-100, 1981-1 C.B. 326. The Group Trust will provide qualified pension and profit-sharing plans and certain governmental plans with a vehicle for pooling a portion of their funds for the purpose of making investments in real estate. The Group Trust is intended to be exempt from Federal income taxes under section 501(a) of the Code as a qualified trust under section 401(a) of the Code.

2. Pursuant to a written investment management agreement entered into with the trustees of the Group Trust, Boston Financial serves as the investment manager for the Group Trust. Boston Financial is a Massachusetts limited partnership registered as an investment adviser under the Investment Advisers Act of 1940. Its general partner is Boston Financial Real Estate Advisors, a division of Boston Financial Technology Group, Inc. (BFTG). BFTG, a Massachusetts corporation organized in 1969, is a diversified real estate investment and management firm that structures a variety of real estate investment programs, primarily through private placements of equity securities for real estate developers in limited partnerships and other entities organized to develop and operate residential and commercial real property. Boston Financial expects to manage additional trusts in the future which will be structured similar to the

Group Trust. Pursuant to the investment management agreement, Boston Financial will be vested with the exclusive authority to acquire, manage and dispose of the Group Trust's investments in real property. Boston Financial will be responsible for performing the day-to-day administrative and investment operations of the Trust. Boston Financial expects to provide property acquisition, maintenance and repair, rent collection, bookkeeping, lease negotiation, mortgage brokerage and other related management services through an affiliate but may at its own expense retain unrelated property management companies.

Messrs. Duncan A. Christie, A. Harold Howell, James S. Hughes and Fred N. Pratt, Jr. serve as the trustees (the Trustees) of the Group Trust. The Trustees are officers of Boston Financial or a related corporation. The Trustees will not be compensated by the Group Trust.

3. Interests in the Group Trust will be offered pursuant to an offering memorandum (the Memorandum) which describes the management, operation, investment objectives and income tax consequences of the Group Trust and compensation to be paid to Boston Financial as investment manager. Units of beneficial interest in the Group Trust (Units) are offered for a price of \$100,000, with a minimum subscription by an investor, subject to waiver by the Trustees under certain circumstances, of \$1 million or 10 units. Given the minimum subscription requirement, Participating Plans should be sufficiently large so that such investment will not violate the diversification requirements of the Act. Boston Financial anticipates that interests in the Group Trust will be offered only to plans with at least \$10 million in assets.

The applicant states that a total of 750 Units will be offered for participation in the Trust. The Group Trust will not enter into any commitments to invest its assets in real estate until subscriptions for at least \$20 million have been accepted by the Trustees. If fewer than \$20 million of subscriptions have been received by October 31, 1986, or a later date prior to May 1, 1987 to which the Trustees may extend the offering (the Offering Termination Date), the Group Trust will terminate.

The Units will be privately offered commencing in June 1985 and will not be registered under the Securities Act of 1933. Neither the Units nor any interest therein may be resold, transferred, assigned, or otherwise disposed of or

encumbered by Participating Plans, as required by Rev. Rul. 81-100.

4. The decision of any plan to invest in the Group Trust will be made by fiduciaries of that plan. The Trustees may reject a subscription for any reason. The applicant states that none of the individual Trustees of the Group Trust, nor any of the employees, officers, directors or shareholders of Boston Financial or its affiliates will exercise any discretionary authority over or otherwise participate in the decision of any plan to invest in the Group Trust. Similarly, none of the individual Trustees of the Group Trust, nor any of the employees, officers, directors or shareholders of Boston Financial or its affiliates will serve as a director or officer of any sponsor of any Participating Plan.

In connection with the proposed exemption for the purchase and sale of Units in the Group Trust, the applicant represents that Boston Financial or its affiliates may act as an investment adviser or investment manager with respect to portions of the assets of plans that may become Participating Plans and may on occasion be retained by such plans to provide services with respect to specific real estate investments made by the plans. However, the applicant represents further that assets of plans for which Boston Financial or any of its affiliates acts as investment adviser or investment manager or otherwise subject to the investment discretion of Boston Financial or any of its affiliates will not be eligible for investment in the Group Trust. In addition, Boston Financial expects to engage in normal marketing and promotional activity in connection with the Group Trust, but it will not recommend investment therein of plan assets with respect to which it acts as an investment adviser or investment manager.<sup>1</sup>

<sup>1</sup> To the extent that, in the ordinary course of business, Boston Financial or any of its affiliates provides "investment advice" to a Participating Plan within the meaning of regulation 29 CFR 2510.3-21(c)(1)(ii)(B) and recommends an investment of the plan's assets in the Group Trust, the presence of an unrelated second fiduciary acting on the consultant/investment adviser's recommendations on behalf of the plan is not sufficient to insulate the advisers from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84-03A and 84-04A, issued by the Department on January 4, 1984.) The Department is unable to conclude that fiduciary self dealing of this type (if present) is in the interests or protective of plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition or sales of Units in the Group Trust to section 406(a) violations only.



5. The Trustees, in their sole discretion, may terminate the Group Trust at any time. The applicant states that the Group Trust will automatically terminate on April 30, 1994, unless Participating Plans holding at least two-thirds of the Units of the Group Trust vote to extend it for one or two successive periods of up to two years each. Upon termination, the Trustees are required to liquidate the Group Trust's properties and distribute its assets to Participating Plans, pro rata, subject to appropriate reserves for existing liabilities and contingencies.

6. The Memorandum advises fiduciaries of prospective Participating Plans that investment in the Group Trust should be considered only on a long-term basis. However, a Participating Plan that desires to dispose of its investment in the Group Trust may apply to the Trustees for redemption of all or some of its Units. The Trustees will not be obligated to redeem any Units prior to the fourth anniversary of the Offering Termination Date and will make redemption payments only out of funds not committed for investment or otherwise available for investment or distribution. The Trustees will be under no obligation to sell any properties to satisfy redemption requests. However, commencing four years after the Offering Termination Date, the Group Trust may not enter into any new commitments to purchase properties during the period commencing 90 days after receipt of a redemption request until such redemption is made. Upon receipt of a redemption request, the Trustees may in their discretion notify all remaining or prospective Participating Plans of the availability of additional Units that may be purchased on a pro rata basis at the existing unit asset value as of the date of redemption.

Upon the redemption date, the Trustees will distribute to the redeeming Participating Plan 90% of the redemption value as of such date of the Units being redeemed. The Trustees will withhold from distribution and place in a separate interest bearing account 10% of the redemption value of the Units being redeemed in order to protect the interests of non-redeeming Participating Plans from any uncertainty inherent in the determination of redemption values. The applicant states that upon completion of the liquidation begun on the scheduled termination date of the Group Trust (April 30, 1994), or within 90 days after such scheduled date in the event of an extension, the Trustees will distribute the deferred redemption amount with all accrued interest thereon to the redeeming Participating Plans.

However, if the redemption value at that time is greater than either the liquidation proceeds or the unit value, then some or all of the deferred redemption amount will be paid to non-redeeming Participating Plans to equalize the redemption and liquidation distributions.

7. The Group Trust will maintain such reserves as Boston Financial deems appropriate. These reserves, along with any subscription proceeds not immediately used to acquire real estate will be temporarily invested in liquid investments, including short-term United States Government securities, interest-bearing deposits, certificates of deposit, banker's acceptances, or other short-term money-market instruments, including short-term debt and commercial paper issued by major corporations some of which may be sponsors of Participating Plans. The selection of such short-term investments will be within the discretion of Boston Financial.

8. Pursuant to applicable Group Trust documents, Boston Financial as investment manager will receive a single fee for its management services, including property management, based in part on the Group Trust's properties and in part on the revenues derived from such properties. The applicant states that no additional fees, commissions or compensation will be paid by the Group Trust to Boston Financial or any of its affiliates for mortgage servicing, lease negotiation, brokerage or other related management services. Boston Financial or its affiliates will be reimbursed by the Group Trust for certain costs and expenses, including travel and other out-of-pocket expenses incurred in connection with property evaluation, negotiation, operation or disposition. The Group Trust will also pay costs of on-site building management personnel and office space, leasing fees paid to third parties and other fees for professional and technical services. However, the Group Trust will not pay leasing fees to agents of employers whose plans are participating in the Group Trust. Boston Financial represents that the single fee structure for the investment and property management services will be disclosed to and known by the fiduciaries of the Participating Plans and that any necessary services other than those described in the Group Trust document will be provided at cost. In addition, the Group Trust will reimburse the salaries of employees of Boston Financial or its affiliates only to the extent that such salaries would not have been incurred

but for the operation of the Group Trust.<sup>2</sup>

9. Because each Participating Plan will incorporate as part of such plan the terms, provisions, and conditions of the Group Trust agreement, the Group Trust will occupy a position equivalent to the trust created under such Participating Plan. Accordingly, pursuant to Revenue Ruling 81-100, it is the position of the Department that a "party in interest" as defined in the Act, or a "disqualified person" as defined in the Code, with respect to a Participating Plan may be viewed as a party in interest or disqualified person with respect to the Group Trust. Thus, a transaction between such party and the Group Trust may be viewed as a prohibited transaction as described in section 406(a) of the Act, section 4975(c) of the Code, or both.

The applicant represents that if the Group Trust is unable to enter into transactions with certain persons because such persons are parties in interest with respect to a Participating Plan, the Group Trust's ability to prudently make its investments and conduct its operations solely for the benefit of the Participating Plans will be unduly restricted. In addition, the purchase and sale of units of participation in the Group Trust may be considered a prohibited sale or transfer of assets between a Participating Plan and the Trustees that is not exempted by operation of the statutory exemption provided in section 408(b)(6) of the Act because the Group Trust is not maintained by a bank or an insurance company.

10. The applicant requests prospective exemptive relief for many of those classes of transactions between the Group Trust and certain parties in interest which were afforded exemptive relief in PTE 80-51. The applicant proposes that such classes of transactions be subject to similar conditions, limitations, and restrictions as those delineated with respect to those transactions afforded exemptive relief in PTE 80-51.

11. The books and records of the Group Trust will be audited by an independent certified public accountant each fiscal year. Copies of such reports and other pertinent information, including a summary of fees and expenses, report of acquisitions and appraisals and schedules of net asset and unit values, will be forwarded to

<sup>2</sup> Thus, the Department is not proposing an exemption for the receipt of investment or property management fees beyond that provided by section 408(b)(2) of the Act.



each Participating Plan. Within sixty days after the close of each of the first three quarters of each fiscal year, Boston Financial will prepare and furnish to each Participating Plan detailed written reports of the financial position of and the business transacted by the Group Trust during that quarter. Such quarterly reports will not be audited.

12. In summary, the applicant represents that the proposed exemption for certain transactions between the Group Trust and certain parties in interest satisfies the criteria of section 408(a) of the Act because: (a) The proposed exemption would allow the Group Trust to enter into transactions which, although prohibited, are necessary for the Group Trust to prudently make its investments and conduct its operations solely for the benefit of its Participating Plans and their participants and beneficiaries; (b) the proposed exemption would only apply to various classes of prohibited transactions which were afforded relief in PTE 80-51 and would be subject to similar conditions, limitations and restrictions as those delineated with respect to those transactions afforded exemptive relief in PTE 80-51; and (c) independent fiduciaries, unrelated to the Group Trust, the Trustees, the investment manager or any other related party, will maintain complete discretion with respect to investment of the Participating Plan's assets in the Group Trust.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8195. (This is not a toll-free number).

**Kimball International, Inc. Indirect Retirement Plan (the Plan) Located in Jasper, Indiana**

[Application No. D-6257]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of 0.59 acres of real property to Kimball International, Inc. (the Employer), the sponsor of the Plan; provided that all terms and conditions of such sale are not less favorable to the Plan than the Plan could

obtain in an arm's-length transaction with an unrelated party.

**Summary of Facts and Representations**

1. The Plan is a defined contribution profit-sharing pension plan with 1,337 participants and total assets of \$7,921,721 as of June 30, 1984. The Employer is an Indiana corporation engaged in the manufacture and marketing of pianos and organs, furniture and contract cabinets and processed wood products. The assets of the Plan are held and managed by the Springs Valley Bank and Trust Company (the Trustee) of Jasper, Indiana, which is not related to the Employer except as Plan Trustee. Under an agreement with the Trustee and the Employer dated October 6, 1982, Arthur L. Dillard (Dillard) monitors and administers leases by which certain real property owned by the Plan is leased to the Employer, totally representing the interests of the Plan with respect to such real property. The leases of such real property by the Plan to the Employer are exempt from the prohibited transaction provisions of the Act and the Code by virtue of an individual administrative exemption, PTE 84-82 (49 FR 26838, June 29, 1984.)

2. Among the parcels of real property leased by the Plan to the Employer under the agreement with Dillard and subject to the exemption PTE 84-82 is the Stylemasters property, a production plant and office situated on approximately 2.07 acres of land located at 15th and Cherry Streets in West Baden, Indiana. Pursuant to a need for additional warehouse space, the Employer intends to construct a new warehouse building on land already owned by the Employer adjoining the Stylemasters property and on a 0.59 acre portion of land (the Sublot), within the Stylemasters property abutting the Employer's land. Accordingly, the Employer proposes to purchase the Sublot from the Plan for the construction of the new warehouse and is requesting an exemption to permit this transaction under the terms and conditions described herein.

3. The Sublot is currently used as parking space, driving access and general outdoor storage, and is not space which is necessary for the independent operation of the plant on the Stylemasters property. The Sublot was appraised by David C. Hoffman and Linda L. Schroering (Hoffman and Schroering), professional real estate appraisers with the independent real estate firm of Schroering Realty of Jasper, Indiana. Hoffman and Schroering determined that as of June 5, 1985, the Sublot had a fair market value of

\$11,800. The Employer proposes to pay the Plan a cash price of \$21,000 for the Sublot and to pay all costs and expenses related to the sale. The Employer's purchase of the Sublot from the Plan as proposed herein has been reviewed and evaluated by Dillard, whose prior approval is required of any transaction with respect to the property which is the subject of PTE 84-82. Dillard represents that the Employer's purchase of the Sublot from the Plan as proposed herein will be in the best interests and protective of the participants and beneficiaries of the Plan. Nothing that the Plan's sale of the Sublot will eliminate the current loading area and parking space for the Stylemasters facility. Dillard has determined that there are adequate alternatives for both loading access and parking space elsewhere on the Stylemasters property. After considering the requirements for independent operation of the Stylemasters property, Dillard represents that the Plan's sale of the Sublot to the Employer will not negatively affect the value of the remainder of the Stylemasters property not interfere with its independent operation. Dillard represents that the Employer will be responsible for any modifications on the Stylemasters property necessary for its independent operation after the sale of the Sublot. In his recommendation for the Plan to proceed with the proposed sale of the Sublot to the Employer, Dillard particularly notes the premium purchase price offered by the Employer, which is \$9,200 higher than the Sublot's fair market value according to Hoffman and Schroering. Hoffman and Schroering have determined that the offered purchase price excess of \$9,200 over the Sublot's appraised fair market value adequately reflects the Sublot's special value to the Employer as a potential purchaser. The Employer specifically represents that in the event such excess is treated as a contribution by the Employer to the Plan, it will not cause the Plan to exceed the limitations of section 415 of the Code. The rental payments paid to the Plan by the Employer for the Stylemasters property will be affected, if at all, by the severance of the Sublot from the Stylemasters property no sooner than the next regularly scheduled rental review under the pertinent lease in 1987.

4. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The proposed transaction has been approved by Dillard, who represents the interests of



the Plan with respect to the subject real property and whose prior approval is required with respect to any transaction involving such real property; (2) The Sublot constitutes space on the Stylemasters property which is not necessary for the operation of the Stylemasters facility; (3) The Plan will incur no sales costs or other related expenses in the transfer of the Sublot to the Employer; and (4) The cash purchase price to be paid for the Sublot by the Employer will represent a premium of \$9,200 over the Sublot's appraised fair market value, a premium which Hoffman & Schroering have determined to be an adequate reflection of the Sublot's special value to the Employer.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Wayne A. Ono, D.D.S., P.S. Money Purchase Pension Plan (the Money Purchase Plan) and Wayne A. Ono, D.D.S., P.S. Profit Sharing Plan (the Profit Sharing Plan; collectively, the Plans) Located in Bellevue, Washington**

[Application Nos. D-6293 and D-6294]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plans of a certain parcel of improved real property (the Property) located in Redmond, Washington, to Wayne A. Ono, D.D.S. and Sadami Ono (the Applicants), parties in interest with respect to the Plan, for \$80,000, provided that such price is not less than the fair market value of the Property as of the date of the sale.

#### *Summary of Facts and Representations*

1. The Money Purchase Pension Plan had four participants and net assets of \$233,140 as of September 30, 1984. The Profit Sharing Plan had four participants and net assets of \$251,361 as of September 30, 1984. The assets of the Plans are commingled for investment purposes. The Applicants are the trustees of the Plans.

2. The Property is an improved lot of approximately 18,600 square feet located in the City of Redmond, King County,

Washington. The only improvements located on the Property are a single story, wood-framed house (the House) built in 1926 and a detached, single-car garage. The total area of the House is 560 square feet. The House is leased to an unrelated party on a month-to-month basis at a rate of approximately \$50 per month. The Property was purchased pursuant to a land contract by the Plans on December 28, 1976 from persons unrelated to the Plans or the Applicants. The purchase price of the Property was \$33,500, which included a down payment of \$8,000 in cash with the remaining \$27,500 payable in semi-annual installments of \$1,500 at an annual interest rate of 8.5 percent. The Property has never been used by a party-in-interest with respect to the Plans, nor does any party-in-interest currently own real property which is adjacent to or located in the area of the Property.

3. Since the purchase of the Property the Plans have paid \$24,000 in mortgage payments, \$978 for insurance and \$4,187 in property taxes. The total expenditures by the Plans in connection with the acquisition and holding of the Property through June 30, 1985 are \$35,165. The balance remaining on the Real Estate Contract is \$19,479 as of June 30, 1985.

4. The Property was appraised by Edwin E. Muehlbach, M.A.I., an independent real estate appraiser in Redmond, Washington, as having a fair market value of \$80,000 as of May 8, 1985, which represents approximately 16.5% of the Plans' current assets. Mr. Muehlbach states in his appraisal that the highest and best use of the Property, if vacant and available for development, is multiple family use. This opinion is based upon his review of the size of the subject property, its shape and topography, its location in and around multiple family development, a zoning which permits this use, the availability of utilities and access to the Redmond central business district. The Property is currently zoned multiple family by the City of Redmond and is suitable for development for eight apartment units.

5. The Applicants represent that the City of Redmond is currently preparing a land use study which recommends a lower density of multiple residence development and specifically recommends the down zoning of other multiple residence zoned property within the City of Redmond. The Applicants believe that reduction in the multiple family zoning would have a substantial adverse effect on the fair market value of the Property and that therefore it would be advantageous to develop the Property the zoning for the Property is favorable.

6. The Applicants represent that the current expenses of maintaining the Property in the Plans, both direct expenses and administrative expenses, exceed the monthly income which is currently being derived from the Property. Furthermore, the Applicants represents that the Plans lack the financial resources and expertise to develop the Property as a multiple family housing project. The applicants also represent that the Plan's rate of return and liquidity will be improved, and diversification of the Plans' assets enhanced, if the Plans sell the Property and change their investment mix.

7. The Applicants propose to purchase the Property from the Plans for its appraised value of \$80,000 in cash. The Plans will pay no expenses, commissions or fees in connection with the sale.

8. In summary, the Applicants represents that the transaction satisfies the criteria of section 408(a) of the Act because: (a) The transaction will be a one time transaction for cash; (b) the Plans will receive the fair market value for the Property as determined by an independent, qualified appraiser; (c) the Plans will not be required to pay any real estate fees or commissions in connection with the sale; and (d) Wayne A. Ono, D.D.S. and Sadami Ono, as trustees for the Plans, have determined that it is in the Plans' best interest to sell the Property because the sale will eliminate the relatively high cost of administering the property and permit the Plans to invest in more liquid assets generating a higher current yield.

For Further Information Contact: Ms. Janet Laufer of the Department, telephone (202) 523-8833, (This is not a toll-free number.)

**Bruce J. Coan, M.D., P.C. Pension Plan and Trust (the Plan) located in Huntley, MT**

[Application No. D-6317]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of unimproved real property (the Property) from the Plan to Bruce J. Coan, M.D. (Dr. Coan), the sole owner of the Plan sponsor and the Plan's sole participant, for \$185,000 provided that



the sale price is not less than the Property's fair market value as of the date of sale.<sup>1</sup>

#### Summary of Facts and Representations

1. The Plan is a money purchase pension plan with one participant and assets with a value of approximately \$235,000. Dr. Coan is the Plan's trustee and sole participant, and the sole owner of Bruce J. Coan, M.D., P.C. (the Plan Sponsor).

2. The Plan purchased the Property on October 12, 1983 from Elmer F. Link, a party unrelated to Dr. Coan or the Plan Sponsor, for \$175,000. Since then, the Plan has incurred approximately \$2,000 to \$3,000 in property taxes and maintenance costs.

3. The applicant represents that the Property produces no income for the Plan and therefore results in a loss to the Plan due to the payment of property taxes. The Plan will invest the proceeds of the sale in income producing property.

4. The Property was appraised on August 5, 1985 by Robert R. Morse, Accredited Rural Appraiser, American Society of Farm Managers and Rural Appraisers. Mr. Morse is represented as being independent of Dr. Coan and having no interest in the Property. Mr. Morse appraised the fair market value of the Property as \$177,000 as of August 5, 1985. In a supplementary letter of September 16, 1985, Mr. Morse indicated that due to the Property's proximity to other land owned by Dr. Coan, and the lack of access to the Property except via Dr. Coan's other land, the Property's value to Dr. Coan would be \$8,000 to \$9,000 higher, reflecting the cost of building an access road and bridge to the Property.

5. Dr. Coan proposes to purchase the Property from the Plan for \$185,000 in cash. The Plan will incur no costs with respect to the transaction.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(C)(2) because: (a) This will be a one-time transaction for cash; (b) the Plan will be able to invest the sale proceeds in income producing assets; and (c) Dr. Coan will pay the Plan the fair market value of the Property plus a premium due to its proximity to other property owned by him.

Notice to Interested persons: Because Dr. Coan is the sole shareholder of the Plan sponsor and the only participant in

the Plan it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 29th day of October 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 85-26394 Filed 11-5-85; 8:45 am]

BILLING CODE 4510-29-M

#### LIBRARY OF CONGRESS

##### Copyright Office

##### Policy Decision Fixing Fees for the Special Handling of Import Statements and Documents

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Policy decision.

**SUMMARY:** The purpose of this notice is to inform the public that, in accordance with 17 U.S.C. 708(a)(11), the Register of Copyrights has fixed a fee for providing the special service of expedited processing (i.e., "special handling") of requests to issue import statements and to record documents pertaining to copyright. The fee for special handling of a request to record a document has been fixed at \$200; the fee for special handling of a request to issue an import statement has been fixed at \$100 when it is submitted alone, and at \$50 when it accompanies a request for special handling of a Form TX (for registration of nondramatic literary works). Each fee has been set by the Register at the cost of providing the service.

**EFFECTIVE DATE:** December 6, 1985.

##### Notice of Policy Decision

##### Fees for Special Handling of Import Statements and Documents

##### 1. Background

Section 708(a) of the Copyright Act, title 17 of the United States Code, prescribes a schedule of fees that must be remitted to the Copyright Office in payment of registration and other services rendered to the public under the Act. Subsection 11 of section 708(a) gives the Register of Copyrights the authority to fix a fee for any special services requiring a substantial amount of time or expense based on the cost of providing the special service.

"Special handling" is a procedure established within the Copyright Office to reduce the length of time remitters with exigent circumstances must wait for the Office to process an application for registration of a claim to copyright, or the recordation of a document, or the

<sup>1</sup> Since Dr. Coan is the sole owner of the Plan sponsor and the sole participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.



issuance of an important statement. Special handling is granted at the discretion of the Register of Copyrights in a limited number of cases as a service to copyright remitters who have compelling reasons for the expedited service.

A request for special handling will be granted only in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited processing. Special handling procedures may be applicable to cases pending in the Copyright Office, provided the previously mentioned criteria are met.

Special handling of requests for issuance of a certificate of registration, certificate of recordation of a document, or the issuance of an import statement can impact many steps or every step of the processing procedures. Under normal procedures, applications, documents and import statements pass through the various processing steps in groups which are administratively efficient. A claim that receives special handling must be processed outside of the normal work flow necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for the special handling of claims to assure both that they move expeditiously through the necessary procedures and that they can be located quickly if the need should arise. Each of these activities involves more staff time than claims in the normal work flow since employees could otherwise be more efficiently occupied processing ordinary claims.

The fee for special handling of a registration of a claim to copyright has been fixed by the Register of Copyrights at \$200, based upon the cost of providing this service. 49 FR 39741. This applies to the special handling of the various classes of registration: TX, SE, PA, VA, SR, RE, CA, GR/CP, and MW.

The special handling fee is chargeable for each application for registration for which special handling service is requested and granted, with one exception. If special handling is requested for only one of several claims submitted at the same time with a single deposit, which is an acceptable deposit for all the claims, the fee for processing the additional claims is \$50 each plus the filing fee for each claim. The claim for which special handling was requested will be processed for the \$200 special handling fee plus the filing fee. The Office emphasizes that this is a narrow exception to the usual rule that the \$200 fee applies to each application given expedited processing. It applies only where a single set of deposit copies

may appropriately be submitted to register multiple claims, in accordance with the practices of the Copyright Office. The applicant will be given the option of submitting an additional set of copies for each application to avoid assessment of the special \$50 fee. If multiple applications are accompanied by individual sets of deposit copies, claims for which special handling is not requested will be processed routinely. Only the claim(s) for which special handling is requested and granted will be processed specially.

Although the Office has occasionally received requests for the special handling of requests to record a document or to issue an import statement, the Register had not fixed a fee for these special services. This notice establishes fees for these services.

## 2. Policy Decision: Fees for Recordation of Document and Issuance of Import Statement

Under the authority of section 708(a)(11) the Register of Copyrights has determined that the requestor of special handling for recordation of documents or issuance of an import statement should pay, in addition to the normal fees for these services, the cost of additional staff time involved in the special handling computed at overtime rates plus a reasonable administrative fee. The fee for the special handling of a recordation of a document has been fixed by the Register of Copyrights at \$200, based upon the cost of this service. The fee for special handling of the issuance of an import statement has been fixed by the Register of Copyrights at \$50 when it accompanies a request for special handling for a Form TX (submitted with its special handling fee of \$200) and \$100 when the request for special handling of the import statement is submitted alone. In fixing these fees the Register of Copyrights has reviewed the experience of the Office since June 1982 when a special handling fee was set for registrations, has re-evaluated the nature and number of requests submitted and the cost of the special administrative procedures required by special handling.

If the request for special handling is granted, the fee is not refundable. The Copyrights Office will make every effort to process the claim, document or import statement within five (5) working days after the request has been approved. Within that period the Office will issue the certificate of registration, certificate of recordation, or import statement, or notify the applicant of any defects. The fee may be charge to a deposit account established in the Copyrights Office. If

the deposit account contains insufficient funds to cover the total special handling fee, or if the remitter does not maintain a deposit account, the total special handling fee may either be paid in person at the Public Information Office in Washington, D.C., or may be remitted by mail. Such payment must be in cash or in the form of a certified check, cashier's check, or money order made payable to the Register of Copyrights. Cash should not be sent by mail, however.

A request for special handling will be granted only in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate or import statement. Special handling procedures may be applicable to cases pending in the Copyrights Office, provided the previously mentioned criteria are met. The Copyrights Office may refuse special handling if the request is not sufficiently justified.

## 3. Procedure for Requesting Special Handling

Requests for special handling may be made in person on the form available in the Public Information Office of the Copyrights Office, Room LM-401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE., Washington, DC. The Office will also consider requests by mail providing the special Handling Request form is used or a cover letter is submitted containing answers to the following questions that are required to be answered in the special handling form: "Why is there an urgent need for special handling? If it is because of litigation, is the litigation actual or prospective? Are you or your client the plaintiff or defendant? What are the names of the parties and the name of the court where the action is pending or expected?" It is also necessary to certify that the answers to these questions are correct to the best of the requestor's knowledge. A mailed request for special handling should be sent to:

Library of Congress, Department DS,  
Washington, D.C. 20540, Attention:  
Acquisitions & Processing Division  
Office

The outside of the envelope and the letter inside should clearly indicate that the correspondence is a request for special handling.

The request for special handling of a registration must be accompanied by a completed application, the required deposit copies, phonorecords, or identifying material, and the special handling fee plus the applicable filing



fee (\$10 for a registration application, except \$6 for a renewal application; \$3 for an import statement) or recordation fees (for a document of six pages or less, covering no more than one title, \$10; for each page over six and each title over one, 50 cents additional).

Dated: October 22, 1985

Ralph Oman,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-26409 Filed 11-5-85; 8:45 am]

BILLING CODE 1410-93-M

## NUCLEAR REGULATORY COMMISSION

### Bi-Weekly Notice; Applications and Amendments To Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on October 23, 1985 (50 FR 43020), through October 23, 1985.

#### NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By December 6, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the



Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Branch Chief): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendment request:  
September 19, 1985.

Description of amendment request:  
The Administrative Controls sections of the Technical Specifications (TS) are to be changed to reflect retitles of on-site and off-site licensee management. In the

off-site organization, a single General Manager—Nuclear Support results in a change in membership of the Nuclear Operations Review Board. In the on-site organization, plant superintendents become managers of their respective organizations. Other management reorganizations are proposed which the licensee states would enhance safety.

Basis for proposed no significant hazards consideration determination:  
The licensee considers the changes not to involve a significant hazards consideration as defined in 10 CFR 50.92 because the proposed changes do not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in margin of safety. We agree. The proposed changes appear only to enhance efficiency and effectiveness in the organizational structure both on-site and off-site. Based upon our preliminary review of the licensee's determination relative to the proposed changes to the TS, Administrative Controls sections, the staff's proposed determination is that the amendment involves no significant hazards consideration.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: George F. Trowbridge, Esquire, 1800 M Street, NW., Washington DC 20063.

NRC Branch Chief: Steven A. Varga.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request:  
September 3, 1985.

Description of amendment request:  
The amendment would revise the Technical Specifications (TSs) by removing those TSs related to the Reactor Vessel Material Surveillance Program. Specifically, the proposed change would remove Sections 4.2.7 and 4.2.8 and Table 4.2-1, which provide for the installation and the scheduled removal of Arkansas Nuclear One, Unit 1 (ANO-1) reactor vessel surveillance specimens into and from the Davis-Besse Unit 1 reactor vessel and certain reporting requirements depending upon the operation of Davis-Besse Unit 1. The proposed change is in response to the NRC staff's acceptance of the Babcock and Wilcox Owners Group (B&WOG) Materials Committee Report, BAW-1543, Revision 2, "Integrated Materials Vessel Surveillance Program, February 1985," for referencing in licensing applications. The acceptance of this

report was provided to Babcock and Wilcox by letter dated March 13, 1985. By letter dated March 8, 1985, the NRC staff provided specific information on actions necessary by the licensees concerning the removal of these TSs. Accordingly, with this request, the licensee requests approval by the Director, Office of Nuclear Reactor Regulation, of the integrated surveillance program for ANO-1 as documented in BAW-1543A, Revision 2, and in accordance with Section II.C of Appendix H, 10 CFR Part 50. Also, consistent with the request for the removal of the current TSs, which were executed in conjunction with previously granted exemptions to Appendix H, 10 CFR Part 50, the licensee requests the withdrawal of these previously granted exemptions (exemptions granted by letters dated April 1, 1977, and April 30, 1982). Upon approval of the integrated surveillance program for ANO-1, granting the withdrawal of the previously granted exemptions, and the issuance of the amendment which would provide for the requested TS changes, the licensee will continue the current reactor vessel material surveillance program in accordance with Appendix H to 10 CFR 50.

Basis for proposed no significant hazards consideration determination:  
The proposed change has been reviewed against each of the criteria to 10 CFR 50.92, namely that the proposed change would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

The proposed change does not involve a change in configuration or operation of ANO-1. Thus it does not increase the probability or consequences of an accident or introduce the possibility of a new or different kind of accident from any previously evaluated. The ANO-1 reactor vessel surveillance capsules will continue to be irradiated in the Davis-Besse Unit 1 reactor vessel. These capsules will be analyzed and the pressurization, heatup, and cooldown limitations, which are developed based upon the capsule analysis will be developed in the same manner as in the past. Thus there would be no significant reduction in the margin of safety.

On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.



**Local Public Document Room**

location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

**Attorney for licensee:** Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, DC 20036.

**NRC Branch Chief:** John F. Stolz.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

**Date of application for amendments:** April 26, 1985.

**Description of amendments request:** The proposed amendments would change the Unit 1 and Unit 2 Technical Specification (TS) 4.6.1.2a to allow completion of the third containment Integrated Leak Rate Test (ILRT) prior to the 10-year Inservice Inspection (ISI) outage. In addition, a footnote associated with TS 4.6.1.2a would be deleted.

**Basis for proposed no significant hazards consideration determination:** The existing Calvert Cliffs TS 4.6.1.2a reference Appendix J of 10 CFR Part 50 and requires that: "Three Types A tests (Overall Integrated Containment Leakage Rate) shall be conducted at  $40 \pm 10$ -month intervals during shutdown at either  $P_1$  (50 psig) or at  $P_2$  (25 psig) during each 10-year service period. The third test of each set shall be conducted during the shutdown for the 10-year plant inservice inspection." Performance of the third ILRT during the 10-year outage which is required by Appendix J would result in the violation of the more frequent  $40 \pm 10$ -month interval required by the TS. Accordingly, the licensee has requested a change to the ILRT schedule, as reflected in TS 4.6.1.2a, to allow the third ILRT to be conducted earlier than required by Appendix J and to eliminate the reference to the Appendix J 10-year inspection. The proposed schedule would satisfy the  $40 \pm 10$ -month inspection interval requirement of TS 4.6.1.2a which is of primary importance because of the more frequent maintenance of containment integrity through the ILRT program. The coincidence of the third ILRT with the 10-year ISI outage is of clearly secondary importance for this schedule change. An exemption from Appendix J to allow earlier containment testing is being considered in a separate but parallel notice.

The proposed change to TS 4.6.1.2a would only affect the scheduling of one of three Type A tests during each 10-year service period; the scheduling of

the two remaining Type A tests would not be affected. The maximum impact of scheduling on the third Type A test would be minor and amount to the duration of one refueling cycle. Moreover, the impact would not be cumulative since each 10-year service period would start a new Type A test schedule. We thus conclude that no reduction in a margin of safety regarding containment integrity will occur since testing of the containment via the ILRT will not be significantly impacted. In addition, since containment integrity would not be reduced via the proposed Type A test schedule, the amendment does not involve a significant increase in the probability or consequences of accidents requiring containment integrity nor will any new or different types of accidents be created.

Accordingly, the Commission proposes to determine that the proposed change to TS 4.6.1.2a involves no significant hazards considerations.

Finally, the licensee has proposed deletion of the footnote associated with TS 4.6.1.2a. This footnote provides specific dates for completion of the third ILRT for Calvert Cliffs. This footnote would no longer be necessary since any ILRT test would be conducted on a  $40 \pm 10$ -month interval, regardless of the ISI schedule. Accordingly, deletion of the footnote associated with TS 4.6.1.2a affects neither ISI nor ILRT schedules and is administrative in nature.

On April 6, 1983, the NRC published guidance in the *Federal Register* concerning examples of amendments that are not likely to involve significant hazards considerations. Example (i), concerning amendments not likely to involve significant hazards consideration, encompasses "administrative changes." Accordingly, the Commission proposes to determine that the deletion of the footnote associated with TS 4.6.1.2a involves no significant hazards considerations.

**Local Public Document Room**  
location: Calvert County Library, Prince Frederick, Maryland.

**Attorney for licensee:** George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

**NRC Branch Chief:** Edward J. Butcher, Acting.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

**Date of application for amendments:** April 26, 1985 as supplemented by letter dated September 30, 1985.

**Description of amendment request:** The proposed amendments would

change the Unit 1 and Unit 2 Technical Specifications (TS) to supplement the containment liner inspection requirements of TS 4.6.1.6.3 with an inspection of the exterior of the containment.

**Basis for proposed no significant hazards consideration determination:** By letter dated September 30, 1985, the licensee requested that the Commission consider an additional change to the TS as a supplement to their April 26, 1985 application. The Commission has already provided proposed no significant hazards consideration determination (50 FR 31061 at 31062) for the subject requested TS changes associated with the April 26, 1985 application.

The proposed TS change, addressed in the licensee's September 30, 1985 letter, resulted from an NRC request concerning proposed containment tendon surveillance TS. In reviewing the proposed containment tendon surveillance TS contained in the licensee's April 26, 1985 application the Commission concluded that the licensee's proposed TS should be supplemented by a visual inspection of the containment exterior for the purpose of detecting changes which may indicate tendon degradation. The proposed visual inspection would be incorporated in TS 4.6.1.6.3, "Liner Plate," and this TS would be redesignated as "Containment Surfaces." This proposed change to the TS, which requires a visual inspection of the containment exterior, represents an additional requirement in the TS.

On April 6, 1983, the NRC published guidance in the *Federal Register* (48 FR 14870) concerning examples of amendments that are likely to involve significant hazards considerations. One such example, (ii), involves "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The proposed change to TS 4.6.1.6.3 represents an additional control in the TS and thus the Commission proposes to determine that the proposed change to TS 4.6.1.6.3 involves no significant hazards considerations.

**Local Public Document Room**  
location: Calvert County Library, Prince Frederick, Maryland.

**Attorney for licensee:** George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036

**NRC Branch Chief:** Edward J. Butcher, Acting.



Commonwealth Edison Company,  
Docket No. 50-373, La Salle County  
Station, Unit 1, La Salle County, Illinois

*Date of amendment requests:* October 11, 1985.

*Description of amendment requests:* The proposed amendment to Operating License NPF-11 would revise the La Salle Unit 1 Technical Specifications by removing the air-operated-testable-bypass-check valves installed in each of the emergency core cooling systems (ECCS) and reactor core isolation system (RCIC). Each ECCS injection line into the reactor vessel has a testable-check valve installed inside containment while the RCIC has one testable-check valve inside and one outside the primary containment. These valves are installed to prevent loss of inventory in the event the injection line breaks between the check valve and the motor-operated injection gate valve.

At the time of La Salle County Station's design, it was expected that these valves would be required to be exercised while the reactor was at pressure. To meet this requirement an air-operated-bypass-check valve was installed around the check valve to equalize the pressure across the check valve disk and thus allowing the air operated check valve to exercise the check valve. In addition, to ensure that these testable check valves would not open during a loss-of-coolant accident, an isolation signal from low water level and high drywell pressure was added and included in the Technical Specifications.

Since the testable-check valves are in the injection flow path, they must be periodically exercised; and therefore, are included in the Pump and Valve Inservice Inspection Program per ASME Section XI. The La Salle Unit 1 Inservice Inspection Program calls for these testable-check valves to be exercised during cold shutdown. Therefore, the bypass check valves are not required, and the licensee is proposing to remove them.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because with the bypass valve removed a leakage path around the testable check valve is eliminated. While this bypass valve was leak tested when the testable check valve was tested and failure of the bypass valve was analyzed, removal of this check will prevent a possible leakage path. Cycling the testable check valve during cold shutdowns only ensures that double isolation of the high to low pressure interface is maintained when required. The operability (ability to open) of the check valve will still be assured by the cycling on a cold shutdown basis.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because by removal of the bypass valve, this eliminates a possible failure mechanism. Failure of the check valve to open is the same as failure of the motor operated injection valve to open which has been analyzed in the Final Safety Analysis Report.

(3) Involve a significant reduction in the margin of safety because all previous requirements will be maintained.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

*Local Public Document Room location:* Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

*Attorney for licensee:* Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

*NRC Branch Chief:* Walter R. Bulter.

Commonwealth Edison Company,  
Docket Nos. 50-373 and 50-374, La Salle  
County Station, Units 1 and 2, La Salle  
County, Illinois

*Date of amendment requests:* October 11, 1985.

*Description of amendment requests:* The proposed amendment to Operating License NPF-11 and Operating License NPF-18 would revise the La Salle Units 1 and 2 Technical Specifications to allow the count rate on the Source Range Monitor (SRM) channels to go below the required counts per second where there are four or less fuel assemblies in a quadrant while they are positioned adjacent to the SMR in that quadrant.

The current Technical Specifications, 3/4.9.2, require that the SRM channel count rate exceed 0.7 counts per second, whenever the signal-to-noise ratio is equal to or greater than two; otherwise, the minimum count should be 3 counts per second. This count rate may be monitored by the SRM detector, or by a special detector (dunker) connected to the normal SRM circuitry. Also, the Technical Specifications require that during core alterations, the detector (SRM or dunker) of an operable SRM channel is located in the core quadrant where core alterations are being performed and another is located in adjacent quadrant. The first requirement assures that, wherever criticality is possible, neutron flux is being monitored so that an inadvertent approach to criticality cannot occur. The second requirement assures that there is adequate monitoring in any quadrant in which core alterations are being made.

During the refueling periods when the entire core is to be removed, it is unlikely that, without sources installed, the required minimum SRM channel count rate of 0.7 counts per second can be demonstrated. Therefore, this proposed amendment would allow the loading of up to four fuel assemblies around each SRM with no minimum channel count rate requirements because analyses indicate that criticality cannot occur with this configuration.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendments will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because positive assurance of sub-criticality is provided by analyses for four or fewer assemblies loaded around the SRM locations;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because



no new modes of refueling operation are being proposed; and

Involve a significant reduction in the margin of safety since the margin to criticality is unaffected by the proposed Technical Specification Amendment.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

**Local Public Document Room**  
location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

**Attorney for licensee:** Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington DC 20036.

**NRC Branch Chief:** Walter R. Butler.  
**Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina**

**Date of amendment request:** August 28, 1985.

**Description of amendment request:** The amendment would permit an exception to the experience requirements for six candidates for senior reactor operator (SRO) licenses. The exception is from the requirements stated in Section A.1.a of Enclosure 1 to the Denton letter, dated March 28, 1980, referenced in Technical Specification Section 6.0, "Administrative Controls".

**Basis for proposed no significant hazards consideration determination:** The Technical Specification Section 6.3 "Unit Staff Qualifications" and Section 6.4 "Training" require, among other things, that the licensee's unit operating staff meet or exceed the requirements in Sections A and C of Enclosure 1 to the Denton letter dated March 28, 1980. Section A of Enclosure 1 requires that an applicant for (SRO) license shall have a minimum of 4 years of experience as a control room operator (fossil or nuclear). This experience requirement is a prerequisite for taking the SRO examination. However, the principal requirement is that the SRO candidates pass the NRC license examination.

The licensee stated in its request that as a result of the NRC staff's recent review of six applications to upgrade a group of reactor operator (RO) licenses to SRO licenses for Catawba Units 1 and 2, it was recognized that this group of operators could be "cold" licensed as SROs on Catawba unit 2 but could not be "hot" licensed as SROs on Catawba Unit 1, the facility for which they hold a current RO license. This situation was created as a result of the experience requirement noted above.

Moreover, the licensee stated that these requirements place an

unnecessary burden on a utility, such as Duke Power Company (Duke), that recruits and trains personnel with little or no prior experience to fill plant operations positions. By requiring four years of experience in the control room, Duke is, in most cases, precluded from "hot" licensing SRO candidates for a period of three years after receipt of an operating license. By requiring that the four years of experience be obtained as a control room operator, experience as an equipment operator at the facility is given no credit by the NRC staff. This requirement is inconsistent with Regulatory Guide 1.8 (September 1975), "Personnel Selection and Training," which endorses ANSI N18.1-1971, "Selection and Training of Nuclear Power Plant Personnel," which credits actual applicable working experience in design, construction, startup, operations, maintenance, or technical services. These are the documents to which Catawba is committed in the FSAR and SER.

Section A of the Denton letter allows exceptions to the experience requirements for SRO applicants for plants that are not yet licensed because there is no opportunity to obtain such experience on their plants. The proposed change to Technical Specification 6.3.1 is requested for a similar reason in that Catawba Unit 1, which received a fuel loading and precriticality testing license in July 1984, a low power license in December 1984, and a full power license in January 1985, has not been in operation long enough to provide an opportunity for reactor operators to have 4 years of control room operating experience.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration by application of the standards in 10 CFR 50.92. The Commission's staff has determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the six SRO candidates are highly trained at Catawba Unit 1, each has held a reactor operator license for more than one year and each would be required to pass the SRO license examination; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the SRO candidates are experienced, licensed operators and the amendment does not change the manner in which the plant is to be operated; or (3) involve a significant reduction in a margin of safety because, in addition to the candidates' being

required to pass the NRC examination for an SRO license, each has a minimum of 6½ years of experience on-site at Catawba, during which each has been actively involved in preoperational testing and checkout, startup testing, and operator training. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

**Local Public Document Room**  
location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

**Attorney for licensee:** Mr. William L. Porter, Esq., Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

**NRC Branch Chief:** Elinor G. Adensam.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

**Date of amendment request:** April 2, 1985.

**Description of amendment request:** The proposed amendment would revise a surveillance requirement and footnote associated with Technical Specification 3/4.1.3.3, Rod Position Indication System. The change to Surveillance Specification 4.1.3.3 would add the statement, "The Reactor Trip System breakers can be closed in order to perform this surveillance." The footnote would be revised to read, "With the Reactor Trip System breakers in the closed position, the Control Rod Drive System capable of rod withdrawal" (words in italics would be added).

**Basis for proposed no significant hazards consideration determination:** Technical Specification 3.1.3.3 requires as a limiting condition for operation that one rod position indicator (excluding demand position indication) be operable and capable of determining control rod position within specified steps for each shutdown or control rod not fully inserted. The specified action if the required indicator(s) is not operable is to immediately open the Reactor Trip System breakers. This specification is applicable for Modes 3 (hot standby), 4 (hot shutdown), and 5 (cold shutdown) with the Reactor Trip System breakers in the closed position. The associated Surveillance Specification 4.1.3.3 requires that rod position indicators be determined to be operable by periodically performing an analog channel operational test.

The proposed addition to Surveillance Specifications 4.1.3.3 would allow the Reactor Trip System breakers to be



closed in order to perform the specified surveillance. This would permit the analog channel operational test specified for this surveillance to be used in conjunction with rod motion to verify operability of the rod position indicators. With the Reactor Trip System breakers open (as required by the action statement), it is not possible to move control rods. The proposed change would allow the Reactor Trip System breakers to be closed only to perform the required surveillance; the Action statement in the event of an inoperable indicator remains the same. The proposed addition to the applicability footnote would clarify that the Specification only applies if the rods are capable of being withdrawn. This is consistent with the existing condition for applicability (trip breakers closed) but better reflects the precise condition for applicability.

The safety significance of unplanned, undetected control rod motion is due to the potential decrease in shutdown margin. Minimum shutdown margins to be maintained by boration control, including actions and surveillances required in the event of an inoperable control rod(s), are specified by Technical Specifications 3/4.1.1 (Modes 1, 2, 3, and 4) and 3/4.1.1.2 (Mode 5). No change to these specifications would be made by the proposed amendments.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The requests involved in this case do not match any of those examples. However, since proposed amendments would not decrease the required shutdown margins, the staff has determined that should this request be implemented, it would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte, (UNCC Station), North Carolina 28223.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

*NRC Branch Chief:* Elinor G. Adensam.

**Florida Power Corporation, et al.,**  
Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

*Date of amendment request:* May 28, 1985.

*Description of amendment request:* The proposed Technical Specification would revise the action statements of Specification 3.1.2.9 to require cold shutdown instead of hot shutdown if boration water sources cannot be restored to operable status within the specified time.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance in the form of examples of amendments that are not considered likely to involve significant hazards considerations (48 FR 14870). Example (i) states "a purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature." The current Specification does not require that the plant be taken to a non-applicable mode (cold shutdown) which would be consistent with other specifications for the plant. The change from hot shutdown to cold shutdown would place the plant in the correct non-applicable mode and would provide consistency in plant specifications. Therefore, this change falls within the scope of the example cited and the Commission's staff proposes to determine that this amendment involves no significant hazards consideration.

*Local Public Document Room location:* Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida.

*Attorney for licensee:* R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

*NRC Branch Chief:* John F. Stolz.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia**

*Date of amendment request:* September 13, 1985, supplementing the submittals of December 14 and 20, 1983.

*Description of amendment request:* This submittal supplements the submittals dated December 14 and 20, 1983, which were noticed in the Federal Register on February 27, 1984 (49 FR 7161). This supplemental request for Technical Specification change relates to the proposed closure times for the

scram discharge volume (SDV) vent and drain valves. The purpose of this change is to revise the proposed closure time requirements for these valves. Since the time of the original submittals, a more detailed evaluation of the closure time has shown that a different closure time is justified. In addition to the change in the proposed value closure time, this submittal corrects a typographical error in the earlier proposed Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (ii) of actions involving no significant hazards considerations relates to a change which constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Another example (i) relates to a purely administrative change to the Technical Specifications. Since the current Technical Specifications do not have requirements for SDV valve closure times, this requested revision to previously proposed closure times still constitutes an additional limitation not presently in the Technical Specifications and fits example (ii) above. The proposed correction of the typographical error fits example (i) above. The Commission therefore proposes to determine that this action involves no significant hazards considerations.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

*Attorney for licensee:* G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC. 20036.

*NRC Branch Chief:* John F. Stolz.

**GPU Nuclear Corporation, et al. Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania**

*Date of amendment request:* February 1, 1985, as revised September 30, 1985.

*Description amendment request:* This Technical Specification (TS) change request provides clarification to existing TSs to insure that the regulating control rod power silicon controlled rectifier (SCR) electronic trips are trip tested monthly and prior to startup when the reactor has been shutdown for greater than 24 hours. The proposed amendment also provides conditions for operability for control rod drive trip breakers and diverse trip devices, and the regulating control rod power SCR electronic trips.



This TS change request was initially noticed May 21, 1985 (50 FR 20981). However due to modifications in the original submittal to add conditions for operability for various equipment, the request is being renoticed.

**Basis for proposed no significant hazards consideration determination:** TMI-1 TS Table 4.1.1, Item 2, requires that the control rod drive trip breakers be trip tested monthly and prior to startup when the reactor has been shutdown for greater than 24 hours. The language of the Specification is broad enough to cover the SCR portion of the trip function, however, for clarity, the Specification is being changed to specifically identify the SCR portion of the trip function. TMI-1 Surveillance Procedure 1303-4.1 requires confirmation of the SCR trip function by verifying the reduction in current from the affected power supply on a monthly basis. This TS change is an administrative change for clarification only; the testing requirement remains the same. This portion of the proposed amendment is in the same category as Example (i) of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870) in that the change is administrative in nature.

The existing Specification 3.5.1.6 has been expanded to provide limiting conditions for operation for specific components of the reactor trip system, i.e., control rod drive trip breakers, the diverse trip features and the regulating control rod power SCR electronic trips, in accordance with the guidance provided in Generic Letter 85-10. The addition of conditions for the diverse trip features, due to the addition of the shunt trip attachment, and the SCR electronic trips will assure the reliability of the reactor trip system is not reduced due to the inoperability of one of these components. Thus, these conditions will constitute an additional control and not reduce the margin of safety.

This portion of the proposed amendment is in the same category as Example (ii) of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870) in that the change constitutes an additional control not presently included in the TSs.

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

**Local Public Document Room location:** Government Publications

Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Attorney for license:** G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC. 20036.

**NRC Branch Chief:** John F. Stolz.

**GPU Nuclear Corporation, et al., Docket No. 50-289 Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania**

**Date of amendment request:** May 28, 1985 and September 30, 1985.

**Description of amendment request:** By letters dated May 28, 1985 and September 30, 1985, GPU Nuclear Corporation requested a change to Figure 6-2 in the TMI-1 Technical Specifications. Figure 6-2 is an organization chart titled "TMI-1 Unit Staff." The proposed change shows the addition of "Manager(s), Plant Engineering" positions reporting to the Plant Engineering Director. Current plans are for two such positions, with several of the Lead Engineers reporting to one of the two Managers. In addition, the proposed amendment changes the "Chemistry Supervisor" block title to "Staff Chemist." The Staff Chemist and Lead Nuclear Engineer will continue to report directly to the Plant Engineering Director per the present requirements.

**Basis for proposed no significant hazards consideration determination:** The proposed amendment changes the Plant Engineering Department principally by increasing the number of managers and reducing the number of engineers who report directly to the Plant Engineering Director. It in effect adds another level of management review not presently required and is therefore similar to example (ii) of amendments that are considered not likely to involve a significant hazards consideration (48 FR 14870), a change that constitutes an additional limitation, restriction or control not presently in the technical specifications.

In addition, the proposed amendment does not affect plant design or operation and does not involve modifications to plant equipment or make changes that would affect plant safety analysis. In this regard the proposed amendment: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated, (2) does not create the possibility of a new or different kind of accident from any accident previously evaluated, and (3) does not involve a significant reduction in a margin of safety. Therefore the proposed amendment does not involve a

significant hazards consideration (48 FR 14870).

**Local Public Document Room location:** Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Attorney for licensee:** G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

**NRC Branch Chief:** John F. Stolz.

**Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York**

**Date of amendment request:** October 21, 1985.

**Description of amendment request:** The proposed amendment would: (1) Revise paragraph 2.C.(8) of the Shoreham license to allow extensions of time, as authorized by the Commission, for the completion of the environmental qualification of certain electrical equipment, and (2) revise Technical Specification Tables 3.3.7.5-1 and 4.3.7.5-1 to reflect the conversion of one of the two Reactor Building Standby Ventilation System (RBSVS) low range noble gas radiation monitors into a Low Range Plant Vent Stack noble gas radiation monitor.

The change to the license condition has been requested because the licensee does not expect to complete the environmental qualification testing and documentation for two hydrogen recombiners and nine ventilation damper actuators before November 30, 1985. By letter dated September 26, 1985, the licensee requested that the Commission grant an extension beyond the November 30, 1985 deadline in license condition 2.C.(8), for the qualification of this equipment. The Commission is considering this request, and the approval of the request would be reflected in a change to condition 2.C.(8).

Shoreham currently has redundant low range RBSVS noble gas radiation monitors that comply with the design and qualification criteria for Category 2 equipment contained in Section 1.3.2 of Regulatory Guide 1.97, Revision 2. Redundancy for either RBSVS or plant vent stack low range noble gas radiation monitors is not required to be in conformance with either Regulatory Guide 1.97, Revision 2 or Revision 3. The licensee proposes to utilize one of the two RBSVS noble gas monitors to monitor noble gas effluent in the plant vent stack, thereby providing an instrument in conformance with Category 2 requirements to monitor the



last Type E variable on page 1.97-13 of Regulatory Guide 1.97, Rev. 2. This is required because the current station vent stack noble gas radiation monitor cannot be environmentally qualified.

**Basis for proposed no significant hazards consideration determination:**

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to these amendment requests follows:

**Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated Radiation Monitors**

The new low range plant vent stack noble gas radiation monitor is physically the same as a monitor which was previously designated as the low range RBSVS monitor. It has the same class 1E power supply and is seismically qualified equipment. It cannot effect other safety-related equipment either electrically or mechanically during a seismic event.

The new sample tubing for the monitor which has been routed in the Control Building chiller room has been designed with Category I supports. It will not collapse or become a missile during a seismic event, and therefore will not impact other safety-related equipment. The tubing running through Category II structures has been designed to Category I standards.

The new station vent monitor does not perform any automatic functions and the standby ventilation system will continue to be monitored by one channel.

For these reasons the staff has concluded that this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

**Equipment Qualification Extension Request:** The requested amendment would only allow an extension to be granted after review and approval by the Commission itself. No change is involved to the design bases or criteria of the equipment in question.

This portion of the amendment does not, therefore, significantly increase the probability or consequences of an accident.

**Standard 2—Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated**

The radiation monitor has not been physically changed except that its sample inlet and discharge lines have been rerouted from the RBSVS discharge piping to the station ventilation exhaust. The monitor has the same 1E power supply and has been seismically qualified so there is no change in its impact on other plant equipment.

All new piping in the Control Building has been seismically qualified so that it cannot impact other safety-related equipment during a seismic event.

The equipment qualification extension amendment does not vary or affect any plant operating condition or parameter. For these reasons, the NRC staff has determined that neither of these proposed amendments creates the possibility of a new or different kind of accident from any accident previously evaluated.

**Standard 3—Involve a Significant Reduction in a Margin of Safety Radiation Monitor**

The monitor does not perform any automatic function, either as it is currently used or as it will be used when it is re-configured. It only monitors plant effluents.

Reducing the required number of RBSVS monitor channels from two to one will not reduce the margin of safety because only one channel is required to be operable at any one time. With that channel inoperable for more than 72 hours, Action Statement 81 of the Shoreham Technical Specifications requires monitoring by an alternate method. Therefore, having one instead of two RBSVS monitors available provides reduced flexibility for plant operation, but does not impact the ability to satisfy this Technical Specification.

**Equipment Qualification Extension:** The requested amendment does not change the qualification parameters or standards, the equipment operability requirements, or the design bases for the equipment or the plant. It would only allow the licensee an extension of time to demonstrate that the equipment in question meets those standards and bases.

For the reasons stated above, the staff has determined that these changes do not involve a significant reduction in any margins of safety.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

**Local Public Document Room location:** Shoreham Wading River Public Library, Route 25A, Shoreham, New York 11788.

**Attorney for licensee:** Anthony F. Earley, Esquire, Long Island Lighting Company, 175 East Old Country Road, Hicksville, New York 11801.

**NRC Branch Chief:** Walter R. Butler

**Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

**Date of application for amendment:** November 24, 1982.

**Description of amendment request:** The proposed amendment will delete Technical Specifications (TSs) Section 6.7.C.2 concerning the reporting requirement for an Annual Nonradiological Environmental Monitoring and Ecological Studies Program Report and add a new section entitled, "Other Environmental Reports (non-radiological, non-aquatic)". The change will provide new reporting requirements on nonradiological, nonaquatic environmental events, which might occur on the plant site, to substitute for Environmental Technical Specifications.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Example (ii) states, "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement."

The proposed change is more restrictive since it requires a written report within 30 days of any environmental event which may result in a significant increase in environmental impact. The report shall describe, analyze and evaluate the event and in addition, describe the probable cause with the corrective action to preclude repetition of the event. For any proposed changes in tests or experiments, which may result in a significant increase in environmental impact which was not previously reviewed or evaluated, the licensee shall evaluate all environmental impacts and submit a report 30 days prior to the proposed activity.



The above changes provide additional restrictions or controls that are not included in the present Technical Specifications, and fit example (ii). The staff therefore proposes that the changes do not involve significant hazards considerations.

*Local Public Document Room*  
location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

*NRC Branch Chief:* Domenic B. Vassallo.

**Pennsylvania Power & Light Company,**  
Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

*Date of amendment request:*  
September 30, 1985.

*Description of amendment request:*  
The purpose of this request is to propose a change to the Susquehanna Steam Electric Station Operating License NPF-22 by deleting license Condition 2.C.(14).

License Condition 2.C.(14) to License NPF-22 reads as follows:

(14) *Control of Heavy Loads (NUREG 0612):*

Prior to startup following the first refueling outage, PP&L shall submit commitments necessary to implement changes in modifications required to fully satisfy the guidelines of Section 5.1.2 through 5.1.6 of NUREG 0612 (Phase II-nine month response to the NRC generic letter dated December 22, 1980).

This request is based on Generic Letter 85-11, dated June 28, 1985, "Completion of Phase II of 'Control of Heavy Loads at Nuclear Power Plants' NUREG-0612". Generic Letter 85-11 concludes, based on the improvements in heavy loads handling obtained from the implementation of NUREG 0612, Phase I, further action is not required to reduce the risks associated with the handling of heavy loads. Specifically, it was concluded that a detailed Phase II review of heavy loads is not necessary and Phase II is to be considered complete.

*Basis for Proposed No Significant Hazards Consideration Determination:*

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. In conjunction with the Phase I effort of NUREG-0612, the load drop accidents for Susquehanna SES have been evaluated and found to be acceptable. As stated in Generic Letter 85-11, Phase II of NUREG-0612 is an enhancement to

Phase I and compliance with Phase I of NUREG-0612 provides "maximum practical defense in depth." The deletion of this License Condition does not alter the presently acceptable evaluation of the load drop accidents which were performed in accordance with Phase I of NUREG-0612.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, Phase II of NUREG-0612 is only an enhancement to Phase I. All accidents previously evaluated were evaluated in accordance with Phase I of NUREG-0612. This aspect will not change. Therefore, the proposed deletion of the License Condition will not create the possibility of a new or different kind of accident. Moreover, the deletion of this License Condition will not change any of the presently acceptable analyses.

3. The proposed change does not involve a significant reduction in a margin of safety. As stated in Generic Letter 85-11, Phase II of NUREG-0612 is an enhancement to Phase I. The margin of safety has already been found to be acceptable, based on implementation of Phase I of NUREG-0612. Phase I implementation will remain as is. The Phase II effort which has not yet been initiated, will not be implemented. The Susquehanna SES heavy load program will remain as is and, therefore, the deletion of this License Condition does not significantly reduce the margin of safety.

The NRC staff agrees with the licensee's evaluation in this regard and proposes to find the proposed change to not involve a significant hazards consideration.

*Local Public Document Room*  
Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

*NRC Branch Chief:* W. Butler.

**Pennsylvania Power & Light Company,**  
Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1 Luzerne County, Pennsylvania

*Date of amendment request:* October 10, 1985.

*Description of amendment request:* As part of an overall effort to enhance the capability of the drywell cooling system, the licensee is installing two non safety-related fans (1V419 A&B) to serve the reactor vessel skirt area. The purpose of this amendment request is to support the

Technical Specification changes related to the installation of the overcurrent protection devices associated with these new fans.

The Technical Specification change adds two thermal-magnetic circuit breakers to Table 3.8.4.1-1 listed on page 3/4 8-25.

*Basis for proposed no significant hazards consideration determination:*  
The licensee in his letter dated October 10, 1985 stated that:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change will improve the capability of the drywell cooling system to meet the minimum temperature requirements in the reactor vessel skirt area. The safety-related function of the drywell atmosphere recirculation and cooling system, air mixing post-LOCA, is not altered by these changes. The new fans have no safety function; they are not operated post-LOCA and do not adversely impact the operation of safety systems.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed action is within the design criteria for the drywell cooling system. Electrical separation, seismic integrity, and all other applicable design criteria are met. The proposed change does not adversely affect the function of any safety system.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change will enhance the capability of the drywell cooling system to maintain the drywell average air temperature required by the Technical Specifications. Therefore safety is improved as a result of this action.

The NRC staff agrees with the licensee's evaluation in this regard and proposes to find the proposed change to not involve a significant hazards consideration. In addition, the Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration, example (ii), is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. Since the licensee has proposed to add these fans subject to controls and requirements to the Technical



Specifications, this change is encompassed by the example (ii). Based on the above, the staff proposes to find that this change does not involve a significant hazards consideration.

**Local Public Document Room**  
location: Osterhout Free Library,  
Reference Department, 71 South  
Franklin Street, Wilkes-Barre,  
Pennsylvania 18701.

**Attorney for licensee:** Jay Silberg,  
Esquire, Shaw, Pittman, Potts and  
Trowbridge, 1800 M Street, NW.,  
Washington, DC 20036.

**NRC Branch Chief:** W. Butler.

**Portland General Electric Company,**  
Docket No. 50-344, Trojan Nuclear  
Plant, Columbia County, Oregon

**Date of amendment request:** May 2,  
1985, as amended September 6, 1985.

**Description of amendment request:**  
The following changes to Operating  
License NPF-1 and the technical  
specifications are proposed:

1. **Operating License**—The Operating  
License would be revised to reflect the  
correct name of the Plant's Quality  
Assurance Program.

2. **Page 3/4 2-2, Axial Flux Difference  
(AFD) Surveillance**—Surveillance  
Requirement 4.2.1.1.a.2, which requires  
monitoring the indicated AFD once per  
24 hours after the AFD Monitor Alarm  
has been placed in operable status,  
would be deleted.

3. **Pages 3/4 4-19 and 4-20, RCS  
Specific Activity**—This change would  
remove all portions of the Action  
statement for MODES 1, 2, 3, 4, and 5 of  
Technical Specification 3.4.8 pertaining  
to a Reportable Occurrence and the  
information required to be submitted  
with it.

4. **Page 3/4 7-38, Control Building  
Modification Connection Bolts**—

The Applicability of Technical  
Specification 3/4.7.11 would be  
corrected to "AT ALL TIMES" rather  
than the current "ALL MODES".

**Basis for proposed no significant  
hazards consideration determination:**  
The Commission has provided guidance  
concerning the standards for  
determining whether a proposed action  
involves a significant hazards  
consideration by providing certain  
examples (48 FR 14870). Three of the  
examples are (i), a purely administrative  
change to the technical specifications;  
(ii) a change that constitutes an  
additional limitation; and (vii) a change  
to make a license conform to changes in  
the regulations.

Three of the four changes discussed  
above are encompassed by these three  
examples. Change No. 1 would correct  
the name of the operations quality  
assurance program to the "Nuclear

Quality Assurance Program." This  
would be a change to the title only, and  
not to the program itself, and is  
encompassed by example (i) of actions  
not likely to involve significant hazards  
considerations. Change No. 3 would  
delete from the Action Statement of 3.4.8  
the statement pertaining to a Reportable  
Occurrence. This change would be in  
response to changes to the reporting  
requirements of 10 CFR 50.73, paragraph  
(g) of which reads, "The requirements  
contained in this section replace all  
existing requirements for licensees to  
report 'Reportable Occurrences' as  
defined in individual plant Technical  
Specifications." This change is  
encompassed by example (vii) and is  
clearly in keeping with the rules and  
regulations. Change No. 4 would revise  
the Applicability of technical  
specification 3/4.7.11 to read, "AT ALL  
TIMES" instead of the current "ALL  
MODES" to account for those few times  
when fuel is not in the reactor pressure  
vessel. This places additional  
restrictions in the technical  
specifications and is therefore,  
encompassed by example (ii) of actions  
not likely to involve significant hazards  
considerations.

Change No. 2 would delete the  
Surveillance Requirement of technical  
specification 3.2.1 which provides a 24  
hour surveillance of the AFD Monitor  
alarm's operability as well as the hour  
by hour accumulation of a 24-hour  
history of AFD penalty minutes. The  
deletion of this Surveillance  
Requirement would not: (1) Involve a  
significant increase in the probability or  
consequences of an accident previously  
evaluated because previous 24-hour  
histories exist and can be manually  
entered into the computer and  
monitoring for operability is duplicative  
of other alarms and indications that  
exist in the control room; or (2) Create  
the possibility of a new or different kind  
of accident previously evaluated  
because the Limiting Conditions for  
Operation have not been changed and  
the Actions still demand a 24-hour  
history of accumulated penalty time; or  
(3) Involve a significant reduction in a  
margin of safety because the need for a  
24-hour history can be met in an  
equivalent manner by manually entering  
any previous 24-hour penalty time into  
the AFD Computer prior to declaring it  
operable. Hourly monitoring of the AFD  
Monitor to assure its operability or until  
it develops a new 24-hour history is  
duplicative and serves as an  
unwarranted burden to the operator.

Therefore, based on the above  
discussions, the staff proposes to  
determine that the application for

amendment does not involve a  
significant hazards consideration.

**Local Public Document Room**  
location: Multnomah County Library,  
801 SW. 10th Avenue, Portland, Oregon.

**Attorney for licensee:** J.W. Durham,  
Senior Vice President, Portland General  
Electric Company, 121 SW. Salmon  
Street, Portland, Oregon 97204.

**NRC Branch Chief:** Edward J. Butcher,  
Acting.

**Portland General Electric Company,**  
Docket No. 50-344, Trojan Nuclear  
Plant, Columbia County, Oregon

**Date of amendment request:** June 14,  
1985.

**Description of amendment request:**  
The following changes to Appendix A of  
Operating License NPF-1 for Trojan  
Nuclear Plant are proposed:

1. **Page 3/4 7-25—Technical  
Specification 4.7.8.1.2.c** would be revised  
to delete the requirement to perform a  
fire pump diesel engine inspection only  
during shutdown modes.

2. **Page 5-3—Figure 5.1-2** would be  
replaced with a new figure which more  
accurately and clearly identifies the  
Low Population Zone for the Trojan  
Nuclear Plant. No change is required to  
Technical Specification 5.1.2.

3. **Page 5-5—Technical Specification  
5.4.2** would be changed to indicate that  
the Reactor Coolant System (RCS)  
volume (hot) is 12,900 ± 100 cu ft.

In addition, an administrative change  
would be made to Bases 3/4.1.1.3, so  
that it would read, "an equivalent  
Reactor Coolant System volume of  
12,900 cubic feet" to be consistent with  
change No. 3 above.

**Basis for proposed no significant  
hazards consideration determination:**  
The Commission has provided guidance  
concerning the application of the  
standards for a no significant hazards  
determination by providing certain  
examples (48 FR 14870). Two of the  
changes discussed above are proposed  
by the staff to be encompassed by  
example (i), purely administrative  
changes to the technical specifications.  
Change No. 2 would replace the Low  
Population Zone figure with a new, more  
accurate figure. Figure 5.1-2 as it  
appears now suggests a Low Population  
Zone of 5-mile radius, which is  
inconsistent with the Trojan  
Radiological Emergency Plan and the  
Updated FSAR. The proposed revision  
would clarify that the Low Population  
Zone is the area within a 2.5 mile radius  
of the reactor vessel. Change No. 3  
would correct the design volume of the  
Reactor Coolant System which is now  
inconsistent with the Trojan updated  
FSAR. This change does not affect the



volume used in the safety analysis nor the RCS flow rate during boron dilution operations. These two proposed changes are administrative in nature and therefore are encompassed by example (i) of actions not likely to involve a significant hazards consideration.

Change No. 1 would allow the fire pump diesel engine inspection to be performed during operation. The licensee's safety evaluation states that the fire protection requirements do not differ significantly between operational and shutdown modes, and the length of time in which the diesel engine would be taken out of service for this inspection would be less than the 72 hours permitted by other technical specifications for other equipment. Also, whenever the diesel engine is out of service for inspection, backup capability is provided by the redundant motor-driven fire pump. The staff agrees with this discussion and concludes that this revision would not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in a margin of safety.

Based on the foregoing, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

**Local Public Document Room location:** Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

**Attorney for licensee:** J.W. Durham, Senior Vice President, Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204.

**NRC Branch Chief:** Edward J. Butcher, Acting.

**Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

**Date of amendment request:** August 28, 1985.

**Description of amendment request:** The amendments would modify the Technical Specifications (TS) to revise the following functional test frequencies from once per 6 months to once per operating cycle: core spray logic, reactor core isolation cooling initiation and isolation logic, high pressure coolant injection initiation and isolation logic, automatic depressurization logic, low pressure coolant injection initiation and containment spray logic, core spray auto initiation logic, and low pressure coolant injection auto initiation inhibit logic.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided guidance

for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). These examples include (vi) A change which either may result in some increase in the probability or consequences of a previously-analyzed accident or reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP); for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The proposed change would modify surveillance requirements which could possibly decrease the reliability or availability of the affected systems. This may in turn affect the probability or consequences of a previously-analyzed accident. However, the revised requirements would be consistent with NUREG-0123, the BWR Standard Technical Specifications (STS). The STS specify functional test intervals of once per operating cycle. Since the STS serves as the basis for assessing conformance to SRP Chapter 16 and the change is consistent with the STS, the change is encompassed by example (vi).

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

**Local Public Document Room location:** Athens Public Library, South and Forrest, Athens, Alabama 35611.

**Attorney for licensee:** H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

**NRC Branch Chief:** Domenic B. Vassallo.

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit No. 1, Callaway County, Missouri**

**Date of application for amendment:** October 15, 1985.

**Brief description of amendment:** The purpose of the proposed amendment is to revise Technical Specification Figures 3.9-1 and 5.6-1 with curves that represent criteria for storing Westinghouse optimized fuel assemblies (OFA) or standard fuel assemblies (SFA) in Region 2 of the spent fuel pool, to revise the maximum initial enrichment limit for reload fuel in the reactor core

and for storage of reload fuel in the spent fuel pool from 3.5 weight percent uranium-235 to 4.2 weight percent uranium-235, and to revise the nominal center-to-center distance between fuel assemblies placed in storage racks from 9.14 to 9.24 inches.

**Basis for proposed no significant hazards consideration determination:** The license amendment application proposes that the revisions are consistent with the licensing bases of the spent fuel pool and that the changes do not alter safe operation of spent fuel pool systems nor violate pool criticality safety limits. The licensee further proposes that an increase in maximum initial enrichment for storage can be up to 4.2 weight percent uranium-235 and that a reload size can be extended to nominally include 80 assemblies without a significant reduction in a margin of safety.

An 84 assembly discharge for the thermal-hydraulic evaluation was analyzed for Cycle 1. Further, since the criticality safety analysis and the thermal-hydraulic and structural analysis confirm that original criteria are met by both OFA and SFA fuel, the possibility of a new or different kind of accident or condition over previous evaluations is not credible. Physically the two fuel designs are similar. OFA fuel is geometrically compatible with SFA fuel. The fuel assembly dimensional envelope, skeletal structure, and internal grid locations are essentially the same. The structural differences for OFA fuel is a smaller fuel rod outer diameter and zircaloy spacer grids rather than inconel. Neutronic differences between the two fuel designs have been analyzed and determined not to alter spent fuel pool criticality safety limits. In essence, the technical specification changes result from a nuclear reactor core reloading where the reload fuel assemblies are not significantly different from those found previously acceptable to the staff.

In evaluating the increase in probability or consequences of any previously analyzed accident, the original accident and hazard scenarios were reevaluated by the licensee considering the OFA fuel design and using the 4.2 weight percent uranium-235 initial enrichment. The scenarios consider dropping a fuel assembly on top of the racks; dropping a fuel assembly which penetrates the racks and occupies a position other than a normal storage location; dropping the fuel cask or other heavy objects into the pool; and the effects of tornado or earthquake on the deformation and relative position of the fuel racks. The



loss of cooling systems under accident conditions was not considered since the Callaway one hundred percent capacity redundant cooling trains provide a single failure proof system.

In the case of a dropped fuel bundle lying on top of the racks, the only negative impact on criticality limits would be a reduction in the axial neutron leakage from the rack. The licensee has demonstrated in the criticality analysis that the contribution of the axial neutron leakage only slightly reduces the value of the maximum effective multiplication factor. For example, calculations show the total axial neutron leakage bias to be only .0022 delta K, where K is the multiplication factor. Without any axial neutron leakage, the multiplication factor of .9387 for Region 1 would be slightly increased to .9409 which is still within the subcritical limit by an acceptable margin. Since there are several inches between the top of the active fuel and the top of the storage racks the reduction in axial neutron leakage from the rack should be negligible.

The spent fuel racks include stainless steel standoffs which maintain a spacing of at least 3.0 inches between the racks and any fuel assembly which might be inadvertently located immediately adjacent to a rack. The standoffs limit the reactivity increase in this event to a few tenths of 1% delta K. In addition, for this abnormal condition credit may be taken for the soluble boron in the pool which has a negative reactivity worth about .247 delta K. Since the positive reactivity would only be a few tenths of 1% delta K and since the soluble boron contributes about .247 delta K negative reactivity, the criticality limit is not exceeded and pool subcriticality is maintained.

The effectiveness of neutron moderation can be characterized by the moderator-to-fuel ratio as a function of water density, fuel density, and fuel lattice geometry. Plots of the moderator-to-fuel ratio against multiplication factor yield a curve that give an optimum ratio for the effectiveness of moderation. Moderator-to-fuel ratios to the left of this optimum are referred to as undermoderated. For an enrichment of 4.2 weight percent uranium-235, the lattice of fuel assemblies results in an undermoderated configuration and any crushing or compaction of the fuel assemblies would tend to reduce the moderator-to-fuel ratio and the multiplication factor of the spent fuel pool. Since the SFA fuel has a larger fuel rod diameter, the lattice of SFA assemblies is even more

undermoderated than OFA fuel. Plots of Region 1 and Region 2 multiplication factors versus water density further demonstrate that a reduction in the water/fuel ratio shows a decreasing multiplication factor. Therefore, the dropping of heavy objects into the pool or deformations from the effects of earthquakes or tornadoes could not produce a criticality accident. In addition, due to a lighter fuel weight for OFA fuel the seismic analysis confirmed the bounding nature of the original analysis for an earthquake event.

Finally in addition, an accident scenario was analyzed in which a fuel assembly from Region 1 of the spent fuel pool was incorrectly transferred to Region 2. The new analysis assumed the extreme case of completely loading Region 2 with unirradiated 4.2 weight percent uranium-235 fuel assemblies. For this abnormal Region 2 condition, credit was taken for 2000 parts-per-million soluble boron. The resulting multiplication factor for this case was .8905 and below the .95 criticality limit.

The licensee has indicated that design conservatism was used in the criticality and thermal hydraulic analyses. In brief summary, the calculations used the conservative assumptions assumed in the original analyses. The criticality cell calculations assumed that the fuel pool water contained boric acid. Sensitivity studies were performed to determine the most conservative refueling times. The most conservative models and parameters were used in all final calculations.

Based on the foregoing, the requested amendment does not present a significant hazard.

*Local Public Document Room locations:* Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

*NRC Branch Chief:* B.J. Youngblood. Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

*Date of amendment requests:* March 16, June 28, August 3, August 9, 1982, June 30, October 27, 1983, March 22, November 2, 1984, and April 17, and August 30, 1985.

*Description of amendment requests:* The requests for amendments were initially noticed on July 20, 1983 (48 FR 33092), June 20, 1984 (49 FR 25378) and April 23, 1985 (50 FR 18019). This notice

includes changes requested in a subsequent submittal dated August 30, 1985. These submittals would amend the operating license and Technical Specifications to reflect changes in the organizational structure of the license.

The August 30, 1985 submittal also consolidates the Technical Specifications changes proposed in the November 2, 1984 and April 17, 1985 submittals regarding the organizational structure, and the November 30, 1984 and April 1, 1985 submittals regarding revisions to reporting requirements as necessitated by §§ 50.72 and 50.73 of Title 10 of the Code of Federal Regulations (noticed on February 27, 1985—50 FR 8011, and June 4, 1985—50 FR 23555). These amendment requests are related to the extent that one of the proposed changes to the reporting requirements (regarding the review of reportable events) is based upon the establishment of the proposed organizational structure.

In addition to providing clarification requested by the staff, the August 30, 1985 submittal proposes to designate an individual—the Assistant Station Manager—as the responsible individual for approving: (1) Procedures and procedure changes; (2) proposed tests and experiments; and (3) all proposed changes to or modifications to plant systems or equipment.

This submittal also proposes to delete the one-time requirement for submitting a special summary technical report on the initial containment structural tests, and to revise the distribution of certain reports to the NRC regional office to reflect the current NRC organizational structure.

*Basis for proposed no significant hazards consideration determination:* The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. In addition, the specification of the one-time submittal of the initial containment structural test reports have been met (Surry 1—August 18, 1972; Surry 2—May 11, 1973). Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration, because the changes will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.



*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

*Attorney for licensee:* Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

*NRC Branch Chief:* Steven A. Varga.

**Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts**

*Date of amendment request:* October 15, 1985 (PC-190).

*Description of amendment request:* The proposed change would add containment isolation valves for the containment breathing air system to the Technical Specifications (TS).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). Example (ii) of actions involving a no significant hazards consideration involves a change that constitutes an additional limitation, restriction, or control not presently included in the TS. The licensee is installing a breathing air system for use inside the vapor container. The proposed change adds the newly installed containment isolation valves to the TS.

Based on this discussion, the staff proposes to determine that the requested action would not involve a significant hazards consideration.

*Local Public Document Room location:* Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

*Attorney for licensee:* Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

*NRC Branch Chief:* John A. Zwolinski.

**Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts**

*Date of amendment request:* October 15, 1985 (PC-195).

*Description of amendment request:* The proposed change would modify the Technical Specifications (TS) to remove power from the Reactor Coolant System (RCS) vent valves.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of standards for making a no significant hazards

consideration determination by providing certain examples. Example (vii) involves a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. TMI Task Action Plan Item II.B.1, issued October 31, 1980, required the installation of RCS vents to all nuclear power plants. The RCS vents were installed, and TS requiring operability of the RCS vents were issued October 1, 1985. In response to the Fire Protection Rule of Appendix R to 10 CFR Part 50, issued September 8, 1981, the licensee committed to remove power from the RCS vents to prevent their inadvertent actuation in the unlikely event of a fire affecting the RCS vent power supplies. To assure compliance with the earlier requirements of TMI Task Action Plan Item II.B.1, the licensee proposes to provide for operability of the RCS vents through the use of operating procedures, which will require local closure of power supply breakers, and subsequent operation of the vents from the control room.

Based on this discussion, the staff proposes to determine that the requested action would not involve a significant hazards consideration.

*Local Public Document Room location:* Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

*Attorney for licensee:* Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

*NRC Branch Chief:* John A. Zwolinski.

#### **PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* September 19, 1985.

*Brief description of amendment:* The proposed change would add a statement to the Technical Specifications (TS) specifying which snubbers shall be operable and deleting TS tables 3.7-4a and 3.7-4b in accordance with NRC Generic letter 84-13 dated May 3, 1984 and entitled "Technical Specifications for Snubbers." These changes will remove the requirement to update the TS whenever a snubber is added or deleted from NA-1&2. A list of snubbers will still be maintained as part of NA-1&2 plants recorded as required by TS 4.9.7.f.

*Date of publication of individual notice in Federal Register:* October 16, 1985 (50 FR 41975).

*Expiration date of individual notice:* November 15, 1985.

*Local Public Document Room location:* Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

#### **NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE**

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant



to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

**Arkansas Power & Light Company,**  
Docket No. 50-368, Arkansas Nuclear  
One, Unit 2, Pope County, Arkansas

*Date of application for amendment:*  
March 13, 1985.

*Brief description of amendment:* The amendment revised Table 3.8-1 of the Technical Specifications related to containment electrical penetration conductor overcurrent protective devices.

*Date of issuance:* October 11, 1985.

*Effective date:* October 11, 1985.

*Amendment No.:* 69.

*Facility Operating License No. NPF-6.*  
Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 4, 1985 (50 FR 23543 at 23544).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1985.

No significance hazards consideration comments received. No.

*Local Public Document Room*  
*location:* Tomlinson Library, Arkansas  
Tech University, Russellville, Arkansas  
72801.

**Commonwealth Edison Company,**  
Docket No. 50-373 La Salle County  
Station, Unit 1, La Salle County, Illinois.

*Date of application for amendment:*  
April 18, 1985.

*Brief description of amendment request:* This amendment would add requirements in the La Salle, Unit 1 Technical Specification for new suppression pool level and water temperature instruments for the remote

shutdown monitoring instrumentation to be added at the first refueling outage. This is in accordance with Supplement 7 to the La Salle Safety Evaluation Report.

*Date of issuance:* October 22, 1985.

*Effective date:* Startup following first refueling.

*Amendment No.:* 27.

*Facility Operating License No. NPF-11.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* May 21, 1985 (50 FR 20973)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1985.

No significance hazards consideration comments received. None.

*Local Public Document Room*

*location:* Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

**Connecticut Yankee Atomic Power Company**  
Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

*Date of application for amendment:*  
July 10, 1985 as modified August 1, 1985.

*Brief description of amendment:* This license amendment modifies the plant Technical Specification by incorporating requirements which restrict the volume of flammable liquids in the control room to no greater than one pint.

If it becomes necessary to introduce quantities of flammable liquids in excess of one pint, written permission is obtained from the Supervising Control Operator or Shift Supervisor and a dedicated fire watch is assigned to the activity to ensure that the flammable liquid would not threaten the safe shutdown capability.

*Date of issuance:* October 16, 1985.

*Effective date:* October 16, 1985.

*Amendment No.:* 69.

*Facility Operating License No. DPR-61.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 28, 1985 (50 FR 34936).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1985.

No significant hazards consideration comments received. No.

*Local Public Document Room*

*location:* Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

**Connecticut Yankee Atomic Power Company**  
Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

*Date of application for amendment:*  
June 11, 1985 as revised June 27, 1985.

*Brief description of amendment:* This amendment revises the technical specifications to update the pressure/temperature limit curves for hydrostatic and leak rate testing and for heatup and cooldown rates. All of these curves are being updated to show the required limitations out to 22.0 effective full power years. This amendment also revises the technical specifications to delete two individual curves on Figures 3.4-1, 3.4-6 and 3.4-7 that describe the maximum pressure of the residual heat removal (RHR) system and minimum pressure for operation of a single reactor coolant pump.

*Date of issuance:* October 16, 1985.

*Effective date:* October 16, 1985.

*Amendment No.:* 70.

*Facility Operating License No. DPR-61.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 18, 1985 (50 FR 25364) and August 14, 1985 (50 FR 32790).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1985.

No significance hazards consideration comments received. No.

*Local Public Document Room*

*location:* Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

**Consolidated Edison Company of New York,**  
Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

*Date of application for amendment:*  
August 6, 1985.

*Brief description of amendment:* The amendment revises the Technical Specifications to delete Specifications 5.3.A.2 and 5.3.A.4 which specifically describe the reactor core design for the IP-2 initial core.

*Date of issuance:* October 17, 1985.

*Effective date:* October 17, 1985.

*Amendment No.:* 100.

*Facility Operating License No. DPR-26.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 28, 1985 (50 FR 34937).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1985.

No significant hazards consideration comments received. No.

*Local Public Document Room*

*location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.



Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

*Date of application for amendment:* February 14, 1983, as supplemented February 28, 1985, August 1, 1985 and September 13, 1985.

*Brief description of amendment:* The amendment revises the Technical Specifications to incorporate requirements for redundant decay heat removal capability during all modes of plant operation. The amendment revises the number of reactor coolant pumps required to be operating when the reactor coolant system is shut down and above 350°F. This change was made to achieve consistency between the safety analysis for the Uncontrolled Rod Withdrawal from Subcritical transient and the Technical Specifications concerning the number of reactor coolant pumps in operation. The amendment revises the Technical Specifications to incorporate specifications on the Overpressure Protection System at Indian Point Unit 2. This system was installed to provide added assurance that the plant can operate without violating pressure limitations. Certain editorial and format changes have also been made.

*Date of issuance:* October 23, 1985.

*Effective date:* Upon issuance to be implemented within 60 days after issuance.

*Amendment No.:* 101.

*Facilities Operating License No.:* DPR-26. Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 23, 1983 (48 FR 38395), September 21, 1983 (48 FR 43134) and April 23, 1985 (50 FR 16002).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 1985.

No significant hazards consideration comments received: No.

*Local Public Document Room*

*location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

**Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan**

*Date of application for amendment:* June 27, 1985.

*Brief description of amendment:* This amendment changes several Technical Specification surveillance frequencies which are currently required regardless of scheduled refueling shutdowns. These changes will provide for continued operation of the facility between

refueling shutdowns without surveillance tests interrupting continued power operation.

*Date of issuance:* October 22, 1985.

*Effective date:* October 22, 1985.

*Amendment No.:* 79.

*Facility Operating License No.:* DPR-6. This amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* September 11, 1985 (50 FR 37077).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1985.

No significant hazards consideration comments received: No.

*Local Public Document Room*

*location:* North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

**Consumer Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* August 2, 1985.

*Brief description of amendment:* Technical Specification 4.7.1(c) is changed to require vendor recommended maintenance and inspection every refueling outage instead of every 18 months as previously specified.

*Date of issuance:* October 28, 1985.

*Effective date:* October 28, 1985.

*Amendment No.:* 92.

*Provisional Operating License No.:* DPR-20. The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 14, 1985 (50 FR 32792).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1985.

No significant hazards consideration comments received: No.

*Local Public Document Room*

*location:* Van Zoeren Library, Hope College, Holland, Michigan 49423.

**Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina**

*Date of application for amendments:* June 26, 1984, supplemented January 25, 1985.

*Brief description of amendments:* These amendments revise the Station's common Technical Specifications (TSs) to delineate the need for administrative controls to limit the working hours for Station staff performing safety-related functions.

*Date of issuance:* October 21, 1985.

*Effective date:* October 21, 1985.

*Amendment Nos.:* 144, 144 and 141.

*Facility Operating License Nos.:* DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* September 28, 1984 (49 FR 38398). Since the initial notice, the licensee submitted a supplement dated January 25, 1985, which clarifies information on overtime and working limits. This information did not revise the proposed TSs, therefore the Commission's staff concluded that renoticing was not necessary.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1985.

No significant hazards consideration comments received: No.

*Local Public Document Room*

*location:* Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

**Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania**

*Date of application for amendment:* July 12, 1985.

*Brief description of amendment:* The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 by deleting the rod bow penalty multiplier from Section 3.2.3, "Nuclear Enthalpy Hot Channel Factor." The basis of the change is contained in a Westinghouse Topical Report, WCAP-8691, Revision 1, which we have approved on December 29, 1982.

*Date of issuance:* October 15, 1985.

*Effective date:* October 15, 1985.

*Amendment No.:* 97.

*Facility Operating License No.:* DPR-66. Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* September 11, 1985 (50 FR 37080).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1985.

No significant hazards consideration comments received: None.

*Local Public Document Room*

*location:* B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida**

*Date of application for amendment:* April 19, 1983.

*Brief description of amendment:* The amendment modified the surveillance requirements of the pressurizer with



regard to reconnection of the pressurizer heaters to their respective buses.

*Date of Issuance:* October 17, 1985.

*Effective Date:* October 17, 1985.

*Amendment No.:* 11.

*Facility Operating License No. NPF-16:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 10, 1983 (48 FR 26929).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1985.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

**General Public Utilities Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, Londonderry Township, Dauphin County, Pennsylvania**

*Date of application for amendment:* April 12, 1985.

*Brief description of amendment:* This amendment consists of a change to Section 2.1.2, Gaseous Effluents of the Appendix B Technical Specifications. To achieve consistency in nomenclature throughout the Technical Specification the term used to describe the testing of radiation vent monitors is changed from "instrument channel test" to "instrument functional test."

*Date of Issuance:* October 21, 1985.

*Effective Date:* October 21, 1985.

*Amendment No.:* 25.

*Facility Operating License No. DPR-73:* Amendment revised the Appendix B Technical Specifications.

*Date of initial notice in Federal Register:* June 19, 1985 (50 FR 24585).

The Commission's related evaluation of the amendment is contained in a letter dated October 21, 1985.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* State Library, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17105.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia**

*Date of amendment request:* June 24, 1985.

*Brief description of amendment:* The amendment revises the Technical Specifications by replacing text that was inadvertently deleted from Section 4.5.D.2 when the page was retyped to

incorporate requested changes that were made in Amendment No. 101.

*Date of issuance:* October 15, 1985.

*Effective date:* October 15, 1985.

*Amendment No.:* 116.

*Facility Operating License No. DPR-57:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* September 11, 1985 (50 FR 37084). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1985.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

**GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey**

*Date of application for amendment:* February 11, 1985.

*Brief description of amendment:* This amendment authorizes changes to the Oyster Creek Appendix A Technical Specifications (TS) to revise Inservice Inspection (ISI) and Inservice Testing (IST) requirements in Section 4.3, Reactor Coolant, of the TS. The changes revise the existing Paragraphs 4.3.D and 4.3.E and Bases of Section 4.3 to replace existing detailed ISI and IST requirements in the TS with references to Section XI of the ASME Boiler and Pressure Code, the details of which are implemented in the station's ISI and IST Programs.

*Date of Issue:* October 18, 1985.

*Effective Date:* October 18, 1985.

*Amendment No.:* 90.

*Provisional Operating License No. DPR-16:* Amendment revised the Appendix A Technical Specifications.

*Date of initial notice in Federal Register:* March 27, 1985 (50 FR 12145).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 18, 1985.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

**Mississippi Power & Light Company, Middle South Energy, Inc., Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of application for amendment:* July 12, 1985, as amended August 12, 1985.

*Brief description of amendment:* The amendment modifies the Technical Specifications related to unit organization, primary containment penetration conductor overcurrent protective devices, control rod scram accumulators, fire detection instrumentation, and electrical power systems-AC sources.

*Date of Issue:* October 21, 1985.

*Effective Date:* Changes to Technical Specification Figure 6.2.2-1, Specification 4.1.3.3, and Table 3.3.7.9-1, are effective October 21, 1985, and changes to Technical Specification Table 3.8.4.1-1 and Specification 4.8.1.1.2.d are effective when the equipment necessitating the Technical Specification changes is installed and made operable.

*Amendment No.:* 6.

*Facility Operating License No. NPF-29:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 28, 1985 (50 FR 34943). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1985.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

**Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of application for amendment:* August 23, 1985, and supplemented September 25 and October 5, 1985.

*Brief description of amendment:* The amendment modifies the Technical Specifications to increase diesel fuel storage and to add a clarification statement to the bases for specification 3/4.8.1 "Electrical Power Systems—AC Sources." The amendment also modifies the license condition related to the standby service water system and adds a license condition to allow a temporary exception to the requirement for a 30-day water supply in the standby service water cooling tower basins.

*Date of issuance:* October 12, 1985.

*Effective date:* October 12, 1985.

*Amendment No.:* 5.

*Facility Operating License No. NPF-29:* Amendment revised the Technical Specifications and the license.

*Date of initial notice in Federal Register:* September 11, 1985 (50 FR 37084).



The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1985.

No significant hazards consideration comments received: No.

**Local Public Document Room**  
location: Hinds Junior College,  
McLendon Library, Raymond,  
Mississippi 39154.

**Northern States Power Company,**  
Docket Nos. 50-282 and 50-306, **Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota**

*Date of application for amendments:* May 17, 1985, supplemented June 3 and August 2, 1985.

*Brief description of amendments:* The amendments modified the Technical Specifications to allow tube sleeving as a method for repairing steam generator tubes in the tubesheet region.

*Date of issuance:* October 11, 1985.

*Effective date:* October 11, 1985.

*Amendment Nos.:* 76 and 69.

*Facility Operating License Nos. DPR-42 and DPR-60.* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 14, 1985 (50 FR 32787 at 32800).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 11, 1985.

No significant hazards consideration comments received: No.

**Local Public Document Room**  
location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

**Pennsylvania Power and Light Company**  
Docket No. 50-388, **Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania**

*Date of application for amendment:* June 24, 1985.

*Brief description of amendment:* Effective January 1, 1984, the requirements contained in 10 CFR 50.72 and 10 CFR 50.73 replaced all existing requirements for licensees to report "Reportable Occurrences" as defined in individual plant Technical Specifications. This amendment deletes Action b of Section 3.3.7.9 "Fire Detection Instrumentation" of the Technical Specifications. Action b of Section 3.3.7.9 required that the licensee: Restore the minimum number of instrument(s) to OPERABLE status within 14 days or, in lieu of any other report required by Specification 6.9.1, prepare and submit a Special Report to the Commission pursuant to Specification 6.9.2 within 30 days

outlining the action taken, the cause of the inoperability and the plans and schedule for restoring the instrument(s) to OPERABLE status.

*Date of issuance:* October 11, 1985.

*Effective date:* Upon issuance.

*Amendment No.:* 18.

*Facility Operating License No. NPF-22.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 28, 1985 (50 FR 34945).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1985. No comments were received regarding the Commission's proposed no significant hazards consideration determination.

**Local Public Document Room**  
location: Osterhout Free Library,  
Reference Department, 71 South Franklin Street, Wilkes-Barre,  
Pennsylvania 18701.

**Southern California Edison Company et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California**

*Date of application for amendment:* April 12, 1985 as modified by letters dated July 1 and 31, 1985.

*Brief description of amendment:* The amendment approves changes to the Appendix A Technical Specifications on Administrative Controls including the areas on reporting requirements, minimum shift composition, offsite organization, and the transfer of the Nuclear Audit and Review Committee responsibilities to the Nuclear Safety Group.

*Date of issuance:* October 15, 1985.

*Effective date:* 30 days from date of issuance.

*Amendment No.:* 91.

*Provisional Operating License No. DPR-13.* Amendment revised the Technical Specifications and deleted license condition 3.I.

*Date of initial notice in Federal Register:* May 21, 1985 (50 FR 20991).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1985.

No significant hazards consideration comments received: No.

**Local Public Document Room**  
location: San Clemente Public Library,  
242 Del Mar, San Clemente, California  
92672.

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California.**

*Dates of application of amendments:* April 27, 1984 and January 29, 1985.

*Brief description of amendments:* The amendments change Technical Specification "Containment Structural Integrity" and the related license condition "Containment Tendon Surveillance."

*Date of issuance:* October 11, 1985.

*Effective date:* October 11, 1985 and fully implemented within 30 days of issuance.

*Amendment Nos.:* 37 and 26.

*Facility Operating License Nos. NPF-10 and NPF-15:* Amendments revised the Technical Specifications and a related license condition.

*Dates of initial notices in Federal Register:* April 23, 1985 (50 FR 16015) and July 17, 1985 (50 FR 29018).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1985.

No significant hazards consideration comments were received.

**Local Public Document Room**  
location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

**Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of application for amendment:* March 27, 1985.

*Brief description of amendment:* The amendment revises the Technical Specifications to: (1) Reflect shift staffing levels for licensed operators consistent with the provisions of the recently revised 10 CFR 50.54; (2) provide corrections which are typographical or clerical in nature; (3) delete from the Technical Specifications pages referring to out-of-date testing provisions; (4) change an organization chart to reflect a recent organizational change in the offsite engineering support organization; and (5) revise the setting for low condensate storage tank level from "2-inches" to "3%" which is a physically equivalent value. The change is necessitated by the replacement of float type limit switches with analog instruments, with corresponding different units of calibration.

*Date of issuance:* October 9, 1985.

*Effective date:* October 9, 1985.

*Amendment No.:* 90.



**Facility Operating License No. DPR-28.** Amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** May 21, 1985 (50 FR 20994).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 9, 1985.

No significant hazards consideration comments received: No.

**Local Public Document Room location:** Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

**Date of application for amendments:** February 14, 1985.

**Brief description of amendments:** The amendments revise the NA-1&2 TS 3/4.2.3 eliminating the Rod Bow Penalty on the nuclear enthalpy hot channel factor.

**Date of issuance:** October 24, 1985.

**Effective date:** October 24, 1985.

**Amendment Nos.:** 69 and 55.

**Facility Operating License Nos. NPF-4 and NPF-7.** Amendments revised the Technical Specifications.

**Date of initial notice in Federal Register:** July 3, 1985 (50 FR 2750 at 27511).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1985.

No significant hazards consideration comments received: No.

**Local Public Document Room locations:** Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2 Louisa County, Virginia

**Date of application for amendments:** March 29, 1985 as revised July 1, 1985.

**Brief description of amendments:** The amendments revise the allowable time that one of the redundant service water headers can be inoperable from 72 hours to 168 hours provided 3 out of 4 service water pumps and 1 out of 2 auxiliary service water pumps are operable during the 168 hour Action Statement. The applicability for the 168 hour action statement applies only to that period of time required for completing the NA-1&2 service Water System upgrade programs. The NA-1&2 Service Water System Upgrade Program is a refurbishment effort by the licensee for the mechanical cleaning and removal of

corrosion products on the inner surface of the service water pipes and valves.

**Date of issuance:** October 25, 1985.

**Effective date:** October 25, 1985.

**Amendment Nos.:** 70 and 56.

**Facility Operating License Nos. NPF-4 and NPF-7.** Amendments revised the Technical Specifications.

**Date of initial notice in Federal Register:** July 31, 1985 (50 FR 31074 and 31075).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1985.

No significant hazards consideration comments received: No.

**Local Public Document Room locations:** Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

**Date of application for amendment:** July 11, 1985.

**Brief description of amendment:** This amendment develops consistency between the Kewaunee Specifications and 10 CFR Part 50 Appendix J in regard to containment air lock surveillance testing.

**Date of issuance:** October 15, 1985.

**Effective date:** October 15, 1985.

**Amendment No.:** 66.

**Facility Operating License No. DPR-43.** Amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** August 28, 1985 (50 FR 34948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1985.

No significant hazards consideration comments received: No.

**Local Public Document Room location:** University of Wisconsin, Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

**Date of application for amendments:** June 17, 1985.

**Brief description of amendments:** The amendments revise the Unit 1 and Unit 2 reaction vessel surveillance capsule removal schedules and the related bases.

**Date of issuance:** October 22, 1985.

**Effective date:** October 22, 1985.

**Amendment Nos.:** 98 and 102.

**Facility Operating License Nos. DPR-24 and DRP-27.** Amendments revised the Technical Specifications.

**Date of initial notice in Federal Register:** July 31, 1985 (50 FR 31061 at 31076).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 22, 1985.

No significant hazards consideration comments received: No.

**Local Public Document Room location:** Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

#### NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding



the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 6, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing

Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with

the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Gulf States Utilities, Docket Nos. 50-458 River Bend Station, Unit 1, West Feliciana Parrish, Louisiana.**

*Date of application for amendments:* September 24, 1985.

*Brief description of amendment:* This amendment authorized increasing the maximum transient generator voltage prescribed for the HPCS diesel generator in item 4.8.1.1.2(f)(3) of the Technical Specifications from 4784 to 5400 volts. The licensee is requesting this amendment in order to proceed with surveillance testing as part of its power ascension program.

*Date of Issuance:* October 11, 1985.

*Effective Date:* September 26, 1985.

*Amendment No.:* 1.

*Facility Operating License No. NPF-40:* Amendments revised the Technical Specifications.

Press release issued requesting comments as to proposed no significant hazards consideration: No.

Comments received: No.



The Commission's related evaluation is contained in a Safety Evaluation dated October 11, 1985.

*Attorney for licensee:* Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*Local Public Document Room*

*Location:* Public Government Documents Department, Louisiana State University, Baton Rouge, Louisiana.

Dated at Bethesda, Maryland, this 30th day of October 1985.

For the Nuclear Regulatory Commission.  
Leon B. Engle,

*Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.*

[FR Doc. 85-26376 Filed 11-5-85; 8:45 am]

BILLING CODE 7590-01-M

### Extending Public Comment Period for NUREG-0956

NUREG-0956, "Reassessment of the Technical Bases for Estimating Source Terms," was issued as a draft on August 7, 1985 for public comment. Source terms are defined as the quantity, the timing, and the characteristics of a release of fission products from a nuclear power plant following a core-melt accident. The report describes the NRC staff's view of the underlying science, which is being published to get broad feedback before proceeding with related regulatory activities.

The length of the public comment period was 90 days, beginning August 7, 1985 and ending November 7, 1985. The first notice in the *Federal Register* erroneously stated that the period would be for 60 days, ending October 7, 1985 (50 FR 31937, Aug. 7, 1985); a correction was issued in the *Federal Register* (50 FR 36939, Sept. 10, 1985).

The NRC has received a number of comments to date. Some of these have provided an assessment of the technical substance of NUREG-0956, while others have requested an extension of time. Some of the comments noted that this might be the only opportunity to comment on an important policy initiative and expressed concern about the lack of an adequate opportunity to provide such comments. Any use of this source term science in a formal regulatory procedure, for example, in rulemaking or in preparation of a regulatory guide, would provide further opportunities for comment. Nevertheless, NRC will extend the comment period as a matter of agency discretion, although a 90-day comment period is typical for a report of this nature.

The NRC is thus extending the public comment period 60 days for a total of

150 days. The public comment period ends on January 7, 1986. Comments on draft NUREG-0956 should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Single copies of draft NUREG-0956 are available, free of charge, by writing to the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(5 U.S.C. 552 (a))

Dated at Silver Spring Maryland, this 30th day of October 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 85-26496 Filed 11-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

### Duke Power Co.; Oconee Nuclear Station, Units 1, 2 and 3; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of part of an application dated February 13, 1984, filed by Duke Power Company (the licensee). The application requested amendments to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55 for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3 located in Oconee County, South Carolina. The pertinent portion of the proposed amendment application would have revised the Technical Specifications (TSs) to define the terms "accessible/accessibility". The Commission issued a Notice of Consideration of Issuance of Amendments in the *Federal Register* on April 25, 1984 (49 FR 17858). By letter dated August 7, 1985, the licensee withdrew the application for the proposed amendments on the definition of "accessible/accessibility". The Commission has considered the licensee's August 7, 1985, letter and has determined that permission to withdraw a portion of the February 13, 1984, application for amendments should be granted.

The February 13, 1984, application requested two other changes: (1) To update the TS reference to the Oconee Final Safety Analysis Report (FSAR) to ensure consistency with reference to the updated FSAR, and (2) to incorporate the fire hose stations (located in the three Oconee reactor buildings) into the

limiting conditions for operation (LCO) and surveillance requirements addressing the fire protection and detection systems. Item 1 has been completed by a license amendment dated May 30, 1985. Item 2 is presently under review and will be handled separately. Both these actions are not affected by this request to withdraw the application for the definition of "accessible/accessibility".

For further details with respect to this action, see (1) the application for amendment dated February 13, 1984; (2) the licensee's letter dated August 7, 1985, withdrawing a portion of the application for license amendment dated February 13, 1984; and (3) the Commission's letter to the licensee dated October 28, 1985. All of these documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Dated at Bethesda, Maryland, this 28th day of October 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

*Chief, Operating Reactors Branch No. 4, Division of Licensing.*

[FR Doc. 85-26413 Filed 11-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-223]

### University of Lowell; Finding of No Significant Environmental Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-125 for the University of Lowell research reactor located on the campus in Lowell, Massachusetts.

The Amendment will renew the Operating License for thirty years from its date of issuance, in accordance with the licensee's application dated February 14, 1985, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License published in the *Federal Register* on March 29, 1985 at 50 FR 12668. On April 29, 1985 a Petition to Intervene was filed. A hearing Board was set up and a prehearing conference scheduled. However, on July 11, 1985 before the prehearing conference was convened, the Petition to Intervene was withdrawn. A Memorandum terminating the proceeding was issued on July 18, 1985 by the Atomic Safety and Licensing Board.



Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

#### Finding of No Significant Impact

The Commission has prepared an Environmental Assessment of this action dated October 4, 1985 and has concluded that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

#### Summary of Environmental Impacts As Described in the Environmental Assessment

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1974. The environmental impacts associated with the continued operation of the facility are discussed in an Environmental Assessment associated with this action. The Assessment concluded that continued operation of this reactor for an additional 30 years will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding.

(b) At a thermal power level of 1 megawatt the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of rapid total loss of coolant, and

(c) The hypothetical loss of integrity of the cladding of the maximum irradiated encapsulated fueled experiment with not lead to radiation exposures in the unrestricted environment that exceed guideline values of 10 CFR Part 20.

For further details with respect to this proposed action, see the application for

license renewal dated February 14, 1985, as supplemented, the Environmental Assessment, and the Safety Evaluation Report prepared by the staff (NUREG-1139).

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Copies of NUREG-1139 may be purchased by calling (202) 275-2060 or Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982.

Dated at Bethesda, Maryland, this 28th day of October 1985.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

*Acting Assistant Director for Safety Assessment, Division of Licensing.*

[FR Doc. 85-26494 Filed 11-5-85; 8:45 am]

BILLING CODE 7590-01-M

#### Issuance and Availability NUREG-0897, Revision 1, "Containment Emergency Sump Performance—Technical Findings Relevant to Unresolved Safety Issue A-43"; Standard Review Plan Section 6.2.2, Revision 4 "Containment Heat Removal Systems" (NUREG-0800); Regulatory Guide 1.82, Revision 1, "Water Sources for Long-Term Recirculation Cooling Following a Loss of Coolant Accident"; and NUREG-0869, Revision 1, "USI A-43 Regulatory Analysis"

The U.S. Nuclear Regulatory Commission (NRC) staff has prepared the following documents: NUREG-0897, Revision 1, "Containment Emergency Sump Performance—Technical Findings Relevant to Unresolved Safety Issue A-43"; Standard Review Plan (SRP) Section 6.2.2, Revision 4, "Containment Heat Removal Systems" (NUREG-0800); Regulatory Guide 1.82, Revision 1, "Water Sources for Long Term Recirculation Cooling Following a Loss of Coolant Accident"; and NUREG-0869, Revision 1, "USI A-43 Regulatory Analysis". These documents serve as the staff's resolution of the NRC's Unresolved Safety Issue (USI) A-43, "Containment Emergency Sump Performance". This issue was identified as an Unresolved Safety Issue in the 1978 Annual Report, pursuant to Section 210 of the Energy Reorganization Act of 1974.

All changes to SRP Section 6.2.2 resulting from the resolution of this Unresolved Safety Issue and any

editorial changes are identified by a line in the margin of the revised SRP section. The SRP and Regulatory Guide changes will become effective six (6) months following date of issuance of these documents.

Comments on NUREG-0869 (which included copies of the proposed R.G. 1.82, Revision 1 and SRP Section 6.2.2, Revision 4) and NUREG-0897 were solicited from interested organizations, groups, and individuals. The staff has evaluated the comments received and addressed them, as appropriate, in the final documents.

Copies of the documents will be available after November 30, 1985. Copies will be sent directly to affected licensees and license applicants. Other copies may be purchased by written request to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, or by calling (202) 275-2171. Other copies will be available for inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. and upon request at the Commission's Local Public Document Rooms (LPDRs) located in the vicinity of nuclear power plants. Requests for placement of these documents in an LPDR Library may be made by contacting the Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7536 or (800) 638-8081 (toll free) or individual LPDR libraries. Addresses and phone numbers of these LPDRs may be obtained from the Local Public Document Room Branch.

For the Nuclear Regulatory Commission.  
Dated at Bethesda, Maryland, this 1st day of November 1985.

Harold R. Denton,

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 85-26495 Filed 11-5-85; 8:45 am]

BILLING CODE 7590-01-M

#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

##### Generalized System of Preferences; Notice Concerning Portugal's Eligibility

The purpose of this notice is to announce that the President has notified Congress of his intent to remove Portugal from the list of beneficiary developing countries under the Generalized System of Preferences (GSP) Program, effective January 1, 1986.

This action is required by section 502(b) of Title V of the Trade Act of



1974, as amended (the Act), which states that no member state of the European Communities may be designated as eligible for GSP benefits. Portugal will become a member state of the European Communities on January 1, 1986.

A proclamation implementing this required action will be issued no later than December 31, 1985.

Donald M. Phillips,

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 85-26438 Filed 11-5-85; 8:45 am]

BILLING CODE 3190-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23886; 70-6306]

### Consolidated Natural Gas Co.; Proposed Extension of Period To Issue Common Stock Under Dividend Reinvestment Plan and Exception from Competitive Bidding

October 31, 1985.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, has filed with this Commission a further post-effective amendment to its declaration in this proceeding pursuant to sections 6(a), 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50(a)(5) promulgated thereunder.

By prior orders in this proceeding dated June 7, 1979, February 12, 1982, November 10, 1983, and November 28, 1984 (HCAR Nos. 21069, 22388, 23114, and 23497), Consolidated was authorized to issue shares of its common stock, \$4 par value, from time to time through December 31, 1985, to the agent for participants in Consolidated's Dividend Reinvestment Plan. As of December 31, 1985, approximately 102,000 shares of common stock allocated to the dividend reinvestment plan will remain unissued.

By post-effective amendment, Consolidated now requests that the period for the common stock issuance be extended to December 31, 1989, for the 102,000 remaining shares. Consolidated has filed a separate declaration (File No. 70-7170) requesting authorization to issue to the agent for the Dividend Reinvestment Plan up to 750,000 shares of its common stock through December 31, 1989.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to

comment or request a hearing should submit their views in writing by November 25, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

*Secretary.*

[FR Doc. 85-26428 Filed 11-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23887; 70-7170]

### Consolidated Natural Gas Co.; Proposed Issuance of Common Stock Under Dividend Reinvestment Plan and Exception from Competitive Bidding

October 31, 1985.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York, 10005, a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a), 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50(a)(5) promulgated thereunder.

Consolidated intends to continue its Dividend Reinvestment Plan ("DRP") and in connection therewith proposes to issue between January 1, 1986, and December 31, 1989, to AmeriTrust Company National Association ("AmeriTrust"), Cleveland, Ohio, as agent for stockholders participating in the DRP, up to 750,000 shares of its common stock, \$4 par value. Consolidated will, at the option of its Board of Directors, offer participants either authorized and unissued common shares or outstanding common shares purchased in the open market. Authorized and unissued common shares will be used whenever additional equity capital is needed by Consolidated. Whenever additional equity capital is not needed, DRP shares will be acquired through open market purchases. In either event, the company

will absorb all brokerage commissions and administrative charges, such as agent fees.

Pursuant to previous orders of this Commission in File No. 70-6306, Consolidated has been issuing its common stock in connection with the DRP. Approximately 102,000 of the shares authorized are expected to remain unissued at December 31, 1985. Consolidated is separately requesting in that proceeding an extension until December 31, 1989, of the period to issue said remaining shares under the DRP.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 25, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

*Secretary.*

[FR Doc. 85-26429 Filed 11-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14780; File No. 811-3631]

### Libra Fund, Inc.; Notice of Application

October 30, 1985.

Notice is hereby given that Libra Fund, Inc. ("Applicant"), 52 Vanderbilt Avenue, New York, New York 10017, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on July 31, 1985, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.



Applicant states that it filed a registration statement pursuant to Section 8(b) of the Act on December 22, 1982, and its registration statement became effective on March 23, 1984. According to the application, the Applicant's board of directors approved its liquidation on March 15, 1985 and its liquidation was authorized by its stockholders on April 15, 1985. The Applicant states that it was dissolved as a corporation under the laws of the State of Maryland, the state in which it was incorporated, on May 9, 1985. The application further states that pursuant to its Plan of Liquidation and Dissolution, the Applicant on May 17 and May 20, 1985, distributed \$398,796.01 and \$1,769.52 in cash to the securityholders of Applicant in complete redemption of the securityholders' shares. Each securityholder received \$5.12 per share representing the net asset value per share on the distribution dates. The shares redeemed totalled 78,235,448 shares.

Applicant further states that it does not now have any securityholders; it has not retained any assets; there are no debts or other liabilities of Applicant that remain outstanding; it is not a party to any litigation or administrative proceeding; and Applicant is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 25, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 85-26430 Filed 11-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14781; File No. 812-6140]

# **Sanwa Bank Canada; Application and Opportunity for Hearing**

October 31, 1985.

Notice is hereby given that Sanwa Bank Canada ("Applicant"), Commerce Court West, Suite 3950, Toronto M5L 1G3, Canada, filed an application on June 24, 1985, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act to enable it to make public offerings of U.S. dollar-denominated certificates of deposits ("CD's") and other debt securities in the United States. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the test of all applicable provisions thereof.

According to the application, Applicant is a Canadian banking corporation chartered under the Canadian Banks and Banking Law Revision Act, 1980 (the "Bank Act") which commenced operations as a full-service bank on August 8, 1983. Applicant states that all of its outstanding capital stock is owned by the Sanwa, Limited Bank ("Sanwa"), a Japanese banking corporation. Applicant offers a wide range of commercial banking services through its head office in Vancouver and its principal business office in Toronto. As of January 31, 1985, Applicant's total assets were approximately equivalent to \$270 million (Can.) of which approximately \$130 million (Can.) or 48% were loans, and total liabilities were approximately equivalent to \$254 million (Can.), of which approximately \$217 million (Can.) or 83% were deposits. Applicant represents that it is extensively regulated under Canadian banking laws and that major aspects of its business are subject to such regulation. Furthermore, Applicant is subject to supervision of and examination by the Canadian Inspector General of Banks, the regulatory authority charged with the administration of the Bank Act.

Applicant states that Sanwa ranked as the ninth largest bank in the free world (as measured by total assets) as of December 31, 1983, with assets in excess of \$91 billion. Sanwa is presently engaged in the conduct of a commercial banking business in Japan which includes receiving deposits, making loans, the discounting of bills and promissory notes, the handling of remittances and performing a wide

variety of related commercial banking services. Sanwa maintains a branch in New York ("Sanwa New York"), licensed by the New York Superintendent of Banks. The application states that Sanwa is extensively regulated under Japanese banking laws and the regulations promulgated thereunder. The Japanese Ministry of Finance normally examines Sanwa once every two or three years, has general authority to require the submission of reports concerning Sanwa's business or financial condition and has general authority to supervise banks in accordance with Japanese banking laws. In addition, The Bank of Japan, the Japanese Central Bank, has had the practice of examining Sanwa in detail at approximately two-year intervals. The Bank of Japan reserves the right to do so pursuant to a current account agreement with each Japanese bank.

The application states that as a matter of United States law, Sanwa is a registered bank holding company pursuant to the Bank Holding Company Act of 1956 by virtue of its ownership of 100% of the shares of Golden State Sanwa Bank, a banking organization chartered under the laws of the State of California, and that Sanwa is also subject to regulation and reporting requirements under the International Banking Act of 1978. Sanwa New York, as a New York branch of a foreign bank, is subject to extensive regulation by the Board of Governors of the Federal Reserve System and the New York State Banking Department, including limitations on banking powers, reserve and reporting requirements and a pledge of assets to cover a fixed percentage of liabilities.

Applicant states that the CD's to be publicly offered by Applicant in the United States will be sold in minimum denominations of U.S. \$100,000 through one or more certificate of deposit dealers, will be sold only to institutional and other sophisticated investors, will have original maturities at their respective dates of issuances of not more than two years and will not include any provision for extension, renewal or automatic rollover. Payment of the principal of, and interest on, the CD's will be unconditionally guaranteed by Sanwa New York and Sanwa may therefore be regarded as the ultimate obligor with respect thereto. Applicants state that the unconditional guarantee by Sanwa New York of payment of principal of and interest on the CD's will constitute the legal, valid and binding obligation of Sanwa as a whole, ranking *pari passu* with all other unsecured



indebtedness of Sanwa, except for certain limited categories of indebtedness given priority by law. Applicant undertakes that, prior to issuance of the CD's, it will obtain appropriate opinions of Japanese and New York counsel to Sanwa to the effect that (i) Sanwa and Sanwa New York have all necessary power and authority to execute, deliver and perform such guarantee, (ii) the execution, delivery and performance by Sanwa and Sanwa New York of such guarantee have been duly authorized by Sanwa and (iii) such guarantee constitutes the legal, valid and binding obligation of Sanwa and Sanwa New York.

Applicant represents that, prior to issuance, the CD's will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and Applicant's United States counsel will have certified that such a rating is in effect. Applicant represents that the CD's will rank *pari passu* among themselves and with all other unsubordinated and unsecured indebtedness of Applicant (except for liabilities to the government of Canada or to the government of any province of Canada), and the guarantees in respect thereof will rank *pari passu* with all other unsecured indebtedness of Sanwa (except that limited categories of indebtedness are preferred by operation of law).

Applicant undertakes that any offering in the United States of CD's will be made only pursuant to a registration statement under the Securities Act of 1933, as amended ("1933 Act"), or pursuant to applicable exemption from the registration requirements of the 1933 Act. Applicant further undertakes that any such offering will be done on the basis of disclosure documents that are at least as comprehensive as those used in offerings of similar securities in the United States by United States issuers, and which include a memorandum describing Applicant, Sanwa and Sanwa New York and containing the most recent publicly available financial statements of Sanwa and Applicant audited in accordance with Japanese and Canadian accounting principles, respectively, and their most recent publicly available unaudited interim financial statements. Such memorandum will describe the material differences between generally accepted accounting principles applicable to United States banks and the accounting principles used in the financial statements included in the memorandum. Such memorandum will be updated promptly

to reflect material changes in the financial condition of Applicant or Sanwa. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree of the CD's prior to any sale of CD's to such offeree, but Applicant understands that an inadvertent failure by a dealer to provide an offeree of the CD's with the type of memorandum described above would not be viewed as a violation of its undertaking to furnish such a memorandum.

Applicant also undertakes, in connection with any offering of CD's in the United States, that it will appoint an agent for service of process in New York City for any action arising out of the sale of the CD's and consent to jurisdiction of any state or federal court located in New York City in respect of any such action. Applicant states that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the offering of the CD's. Such appointment of an agent and consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the CD's have been paid.

Applicant also undertakes that if it shall make any future offerings of debt securities in the United States (i) such securities shall have the same *pari passu* status as described above in respect of the CD's, (ii) such offerings shall be made only pursuant to a registration statement under the 1933 Act or an applicable exemption from registration under the 1933 Act, (iii) such offerings shall be made on the basis of disclosure documents and financial statements at least as comprehensive as those described above, to the extent material to such securities, which the Applicant will ensure are received by an offeree of such securities, prior to purchase thereof, (iv) such debt securities shall have received an investment grade rating as described above in respect of the CD's, certified by United States counsel, and (v) Applicant will irrevocably submit to jurisdiction, and appoint an agent for service of process, in the manner described above in respect of the CD's. Further, if such securities are to be guaranteed by Sanwa New York, Applicant states that it shall have obtained an opinion of Japanese legal counsel to Sanwa as to the enforceability of such guarantee against Sanwa in accordance with its terms.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 25, 1985, at 5:30 p.m., do so by submitting a written request

setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-26431 Filed 11-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14778; File No. 812-6215]

#### Secured Holding Co., Inc.; Application Requesting Temporary Exemption From All Provisions of the Act

October 29, 1985.

Notice is hereby given that Secured Holding Company, Inc. (the "Applicant"), 1311 West 96th Street, Indianapolis, Indiana 46260, an Indiana Corporation, filed an application on September 30, 1985, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting it from all provisions of the Act for a period ending July 1, 1987. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions thereof.

According to the application, Applicant was organized on November 21, 1984, for the purpose of organizing or acquiring, financing and operating an Indiana life insurance subsidiary. Applicant represents that Indiana law requires that no insurance company created after 1977 may commence operations unless it has starting capital in excess of \$2,000,000 (consisting of paid-in capital stock of not less than \$1,000,000 and a surplus of \$1,000,000). Applicant states that since its creation, its officers have been actively engaged in raising the amount of capital required by Indiana state law so that it may establish a life insurance company. However, because Applicant is a new company with no operating history, it



asserts that raising such a large amount of capital is a time-consuming process.

Applicant states that it was initially capitalized with \$50,000 by its president, Edward F. Karsch ("President"), who is also a director, promoter and person chiefly responsible for the operation of Applicant. Applicant further states that it made two private offerings of stock, which were exempt from registration under Indiana law and the Securities Act of 1933, in order to raise the sufficient capital. The private placements raised a total of \$310,000 from 20 investors. Also, on September 10, 1985, Applicant represents that it began offering shares of its common stock to Indiana residents pursuant to an intrastate public offering registered by qualification under the Indiana securities laws.

Applicant states that the majority of its assets are being invested in United States treasury notes, money market funds, and tax-free municipal bonds so Applicant can preserve their value. Applicant also states that 85% of the capital received through the initial public offering will be held in escrow until the Applicant can raise the adequate amount and the remaining 15% will be used by Applicant to pay sales commissions and other offering cost. Further, as soon as Applicant has raised sufficient capital to establish or acquire a life insurance subsidiary, Applicant represents that the majority of its assets will be released from escrow and, along with the short-term investments, will be invested in a life insurance company.

Applicant believes that its President is working diligently to accomplish the investment of the Applicant's assets in an on-going insurance business. In addition, Applicant contends that it is constantly reviewing the possibility of acquiring an established Indiana life insurance company that has lower capital and surplus requirements so that it can take advantage of certain "grandfather" provisions under Indiana law. Therefore, any candidate for acquisition which becomes available will be given serious consideration by Applicant.

Applicant is currently relying on Rule 3a-2 under the Act, which allows start-up companies a year to become primarily engaged in a non-investment company business. Applicant is convinced that if that one-year period is measured from its date of incorporation, it is very unlikely that Applicant will be able to make the required transition to an operating business within the designated period despite the best efforts and good faith of Applicant's employees. Applicant submits that its ability to make such a transition will

depend upon a number of factors beyond its control, such as the willingness of potential investors to invest in Applicant and/or the availability of an appropriate acquisition candidate.

Applicant represents that its directors have declared by resolution dated February 19, 1985, that Applicant intends to form or acquire an Indiana life insurance subsidiary and to be primarily engaged in the business of operating such subsidiary. Applicant asserts that its business activities since its inception demonstrate its *bona fide* intent, and that it therefore falls within the exemptive language of Rule 3a-2.

Applicant asserts that the request for exemption is necessary and appropriate in the public interest and consistent with the protection of investors. Applicant contends that it failed to become primarily engaged in the operation of the proposed life insurance subsidiary within the one-year period allowed by Rule 3a-2 due to factors beyond its control. Applicant states that it can control neither the time it takes to acquire the legally required capital nor the availability of acquisition candidates. Further, Applicant believes that its officers and employees have been trying since its inception, and will continue to try, in good faith, to effectuate the investment of its assets in a non-investment company business.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 85-26432 Filed 11-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14782; File No. 812-6142]

# Standby Tax-Exempt Reserve Fund, Inc.; Application and Opportunity for Hearing

October 31, 1985.

Notice is hereby given that Standby Tax-Exempt Reserve Fund, Inc. ("Applicant"), One Battery Park Plaza, New York, New York 10004, an open-end, diversified management investment company, filed an application on June 28, 1985, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from Sections 12(d)(3) and 2(a)(41) of the Act to the extent necessary to permit Applicant to acquire rights to sell its portfolio securities to brokers, dealers or other financial institutions, and to permit the valuation of such rights at zero. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

Applicant, organized as a Maryland corporation, states that at least 80% of its assets will be invested in debt obligations issued by or on behalf of states, territories and possessions of the United States, the District of Columbia and their respective authorities, agencies, instrumentalities and political subdivisions ("Municipal Securities"). Applicant states that it will invest in Municipal Securities only if they are determined to be of high quality and to present minimal credit risks pursuant to guidelines established by the Applicant's board of directors. Applicant intends to maintain a constant net asset value per share of \$1.00. Applicant states that in order to maintain that constant value, it will calculate its current price per share by using the amortized cost method of valuation and in that regard will comply with Rule 2a-7 under the Act.

Applicant states that in order to provide its investors the ability to receive next-day redemption proceeds, Applicant must obtain the cash needed to meet net redemptions within one business day after receipt of a redemption request. Applicant states that in order to achieve a reasonable level of portfolio liquidity to permit it to honor such requests Applicant proposes to adopt policies permitting the acquisition of Stand-by Commitments from brokers, dealers or other financial institutions. Applicant states that the acquisition of Stand-by Commitments will be permitted solely to facilitate



portfolio liquidity, and that the acquisition or exercisability of a Stand-by Commitment will not affect the valuation or maturity of Applicant's underlying portfolio of Municipal Securities, which will continue to be valued in accordance with the amortized cost method.

Applicant states that the Stand-by Commitments which it would acquire would have the following features: (1) They will be in writing and will be physically held by Applicant's custodian; (2) they may be exercisable by Applicant at any time prior to the underlying security's maturity; (3) Applicant's rights to exercise them will be unconditional and unqualified; (4) they will be entered into only with dealers, banks and broker-dealers who in the opinion of Applicant's investment manager present a minimal risk of default; (5) although Stand-by Commitments will not be transferable, Municipal Securities purchased subject to such commitments may be sold to a third party at any time, even though the commitment is outstanding; and (6) their exercise price will be (a) Applicant's acquisition cost of the Municipal Securities that are subject to the commitment (excluding any accrued interest that Applicant paid on their acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period Applicant owned the Municipal Securities, plus (b) all interest accrued on such securities since the last interest payment date during the period the Municipal Securities were owned by Applicant. Applicant further states that because it will value Municipal Securities on an amortized cost basis, the amount payable under a Stand-by Commitment will be substantially the same as the value assigned by Applicant to the underlying securities. Moreover, Applicant submits that there is little risk of an event occurring that would make amortized cost valuation of Applicant's portfolio securities inappropriate. Applicant represents that in the unlikely event that the market or fair value of securities in its portfolio were not substantially equivalent to their amortized cost value, however, the Applicant's board of directors may determine that the securities should be valued on the basis of available market information. Stand-by Commitments relating to such securities would be expected to continue to be valued as described above because Applicant expects to refrain from exercising the Stand-by Commitments to avoid imposing a loss on a selling broker, dealer or other financial institution and

jeopardizing Applicant's business relationship with that institution.

According to the application, Applicant expects that Stand-by Commitments generally will be available without the payment of any direct or indirect consideration. Applicant states that, if necessary or advisable, Applicant will pay for Stand-by Commitments, either separately in cash or by paying a higher price for portfolio securities that are acquired subject to the commitment. Applicant states that as a matter of policy, the total amount "paid" in either manner for outstanding Stand-by Commitments held in its portfolio will not exceed  $\frac{1}{2}$  of 1% of the value of its total assets calculated immediately after any Stand-by Commitment is acquired.

Applicant states that it will be difficult to evaluate the likelihood of use or the potential benefit of a Stand-by Commitment. Therefore, Applicant states that, if the order sought by the application were to be granted, the board of directors will determine that the fair value of a Stand-by Commitment is zero, regardless of whether any direct or indirect consideration is paid. Where Applicant has paid for a Stand-by Commitment, its cost will be reflected as unrealized depreciation for the period during which the commitment is held. In addition, Applicant states that, for purposes of complying with Rule 2a-7, the maturity of a portfolio security shall not be considered shortened or otherwise affected by the acquisition of a Stand-by Commitment.

Applicant asserts that the requested relief is appropriate, is in the public interest and is consistent with the protection of investors. Applicant submits that the proposed acquisition of Stand-by Commitments will not affect the calculation of its net asset value per share and will not pose new investment risks, but rather will improve its liquidity and ability to pay redemption proceeds on the next day in federal funds. Furthermore, Applicant states that the acquisition of Stand-by Commitments will not meaningfully expose its assets to the entrepreneurial risks of the investment banking business, nor require it to evaluate the credit of dealers in determining its net asset value. Applicant asserts that the relationship between it and a selling broker or dealer will be comparable to a collateralized broker-dealer repurchase agreement or secured loan. Finally, Applicant states that it will not acquire Stand-by Commitments to promote reciprocal practices, to encourage the sales of its shares or to obtain research services.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 25, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 85-26433 Filed 11-5-85; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. IA-994: 803-49]

# **Wells Fargo Investment Advisors; Notice of Application for an Order Granting Exemption**

October 29, 1985.

Notice is hereby given that Wells Fargo Investment Advisors ("Applicant"), 475 Sansome Street, San Francisco, California 94163, filed an application on April 24, 1985, and an amendment thereto on August 30, 1985, requesting an order of the Commission, pursuant to section 206(A) of the Investment Advisers Act of 1940 ("Act"), exempting Applicant's proposed incentive fee arrangements regarding funds beneficially owned by its corporate parent, Wells Fargo & Co. ("WF&Co.") and other wholly-owned subsidiaries of WF&Co. from the provisions of section 205(1) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the applicable provisions.

Applicant, a California corporation which is registered as an investment adviser under the Act, states that it is a wholly-owned subsidiary of WF&Co., a public company listed on the New York Stock Exchange, Inc. Through its several subsidiaries, WF&Co. provides a wide range of consumer and commercial



financial services; the major subsidiary of WF&Co., Wells Fargo Bank, N.A. ("Bank"), a national banking association, is one of California's largest banks. At December 31, 1984, WF&Co. had consolidated assets of over \$28 billion. The application indicates that all Wells Fargo subsidiaries are fully consolidated with WF&Co. for financial reporting and federal income tax purposes.

Applicant states that, prior to 1985, the Bank maintained a separate investment advisory division with responsibility for managing various funds and accounts over which the Bank had a fiduciary or investment advisory responsibility. Applicant also states that, in 1984, the Bank transferred many of these functions to Applicant, a newly formed WF&Co. subsidiary. In November 1984, Applicant was registered as an investment adviser and commenced operations effective January 1, 1985.

Applicant states that, as a registered investment adviser, its primary activity is to advise the Bank with regard to various funds and accounts beneficially owned by third parties for which the Bank acts as a fiduciary. Applicant represents that payments to it for such services have been made, and will continue to be made, pursuant to investment advisory contracts that comply with the requirements of the Act, and specifically with Section 205(1) of the Act, or that are properly exempted from the Act by order of the Commission.

Applicant now proposes to enter into investment advisory contracts with WF&Co. for the management of funds, securities and other assets that are beneficially owned by WF&Co. and held by the Bank as custodian for WF&Co. or its other wholly-owned subsidiaries.

Applicant seeks an exemptive order that would allow these advisory contracts to provide for compensation to Applicant that would be measured by the capital gains or appreciation of the assets under management, but that would not qualify as "fulcrum fee arrangements" under section 205(1) of the Act. Applicant represents that the exemptive order sought by Applicant relates only to funds that are beneficially owned either by WF&Co. or by one of its wholly-owned subsidiaries. Applicant states that such funds consist of treasury accounts of those entities or other funds legally available for investment by them for their own accounts. Applicant further represents that investment advisory contracts regarding the funds of bank depositors or trust or other accounts or funds held by the Bank (or by an other WF&Co.

subsidiary), as custodian or trustee for any third party not wholly-owned by WF&Co., are outside the scope of Applicant's request.

In support of its request, Applicant points out that the proposed incentive fee arrangements pose no risk to investors, since the only funds to which they will apply will be funds beneficially owned by Applicant's parent company or by other affiliates of Applicant and invested solely for the accounts of those entities. Applicant represents that no funds beneficially owned by any third party will be involved in or the subject of any investment advisory arrangement covered by the requested exemptive order, and none of the entities whose funds may be managed under the arrangements subject to that order is an investment company subject to the Investment Company Act of 1940 or a private investment company as defined in proposed Rule 205-3 under the Act.

Applicant submits that in this regard neither WF&Co. nor its subsidiaries has any need for the protections afforded by the Act; WF&Co. maintains ultimate control over Applicant and all the companies in the Wells Fargo organization by virtue of its complete ownership interest, and requires no protection from Applicant, its own subsidiary, with regard to WF&Co. funds or the funds beneficially owned by other wholly-owned WF&Co. subsidiaries. Applicant argues that no public interest requires regulation of the internal business arrangements among wholly-owned and affiliated entities such as these.

Applicant states that, as a bank holding company, WF&Co. is subject to the supervision of the Federal Reserve Board and its regulations as well as certain regulations of the Comptroller of the Currency. Applicant submits that because Applicant and the other Wells Fargo subsidiaries are wholly-owned by WF&Co., and because all of their revenues and expenses are consolidated in the financial reports of the parent company, any capital gains or losses on the funds beneficially owned by those entities that are under Applicant's management will ultimately fall on the identical persons so that there will be no potential for the abuses which Section 205(1) of the Act seeks to prevent.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 25, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities

and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 85-26434 Filed 11-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-23884; 70-7023]

**Alabama Power Co.; Proposal To Supplement Installment Sales Agreement in Connection With the Issuance of Pollution Control Bonds up to an Aggregate Amount of \$125 Million**

October 29, 1985.

Alabama Power Company ("Alabama") 600 North 18th Street, Birmingham, Alabama 35291, a subsidiary of The Southern Company, Atlanta, Georgia, a registered holding company, has proposed a transaction with this Commission subject to sections 6(a), 7, 9(a), 10, and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44(b)(3) thereunder.

By prior Commission Order, Alabama was authorized to execute two Installment Sales Agreements ("Agreements") with the Industrial Board of Columbia, Alabama ("Board") to finance certain pollution control facilities at Alabama's Farley Nuclear Plant ("Project") (HCAR No. 20545, May 16, 1978). Pursuant to the Agreements, the Board purchased the Project from Alabama, completed construction, and sold it back to Alabama for the cost of construction price ("Price") payable semi-annually for a term of years.

By subsequent order, Alabama was authorized to request the Board to issue up to \$250 million of Series B Bonds ("Bonds") subject to the terms and conditions of the original Agreements, including an increase in the semi-annual purchase payments reflecting an amount sufficient to pay principal, premium, and interest on the Bonds as they become due (HCAR No. 23490, November 20, 1984). As amended, that order authorized a \$100 million issuance of Bonds, reserving jurisdiction over the



remaining \$150 million. Subsequent Commission orders authorized the sale of an additional \$100 million aggregate amount of Bonds, leaving \$50 million subject to the reservation of jurisdiction (HCAR No. 23525, December 11, 1984; HCAR No. 23733, June 14, 1985).

Alabama now proposes to request the Board to issue up to \$125 million of Bonds subject to the same terms and conditions contained in the original agreements.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 22, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 85-26427 Filed 11-5-85; 8:45 am]  
BILLING CODE 8010-01-M

**Self-Regulatory Organizations;  
Applications for Unlisted Trading  
Privileges and of Opportunity for  
Hearing; Boston Stock Exchange, Inc.**

October 30, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Bear Stearns Company, Inc., Common Stock,  
\$1.00 Par Value (File No. 7-8644)  
Fireman's Fund Corporation, Common Stock,  
\$1.00 Par Value (File No. 7-8645)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 20, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 85-26425 Filed 11-5-85; 8:45 am]  
BILLING CODE 8010-01-M

**Self-Regulatory Organizations;  
Applications for Unlisted Trading  
Privileges and of Opportunity for  
Hearing; Philadelphia Stock Exchange,  
Inc.**

October 31, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Pullman-Peabody Co., Common Stock, \$0.10  
Par Value (File No. 7-8646)  
Rockefeller Center Properties, Inc., Common  
Stock, \$0.01 Par Value (File No. 7-8647)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 21, 1985 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 85-26426 Filed 11-5-85; 8:45 am]  
BILLING CODE 8010-01-M

**DEPARTMENT OF THE TREASURY**

**Office of the Secretary**

[Department Circular—Public Debt Series—  
No. 33-85]

**10 1/4 % Treasury Bonds of 2005**

October 29, 1985.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$4,750,000,000 of United States securities, designated 10 1/4 percent Treasury Bonds of 2005 (CUSIP No. 912810 DR 6), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Bonds will be issued November 4, 1985, and are offered as an additional amount of 10 1/4 % Treasury Bonds of 2005 (CUSIP No. 912810 DR 6) dated July 2, 1985. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from July 2, 1985, to November 4, 1985. Interest on the Bonds offered as an additional issue is payable on a semiannual basis on February 15, 1986, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 2005, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue



Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Bonds in registered definitive form will be issued in denominations of \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000. Bonds in book-entry form will be issued in multiples of those amounts. Bonds will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Bonds, exchanges of Bonds between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Bonds will become eligible for STRIPS (Separate Trading of Registered Interest and Principal of Securities) on February 18, 1986. Under the Treasury's STRIPS program, a book-entry Bond may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components will be announced at a later date.

2.7. The Department of the Treasury's general regulations governing United States securities apply to the Bonds offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, October 31, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, October 30, 1985, and received no later than Monday, November 4, 1985.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is \$1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yield higher than 11.34% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 95.250. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive

tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

### 4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

### 5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from July 2, 1985, to November 4, 1985, in the amount of \$38.72798 per \$1,000 of Bonds allotted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Monday, November 4, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, October 31, 1985. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Bonds allotted for their own



accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or Before Monday, November 4, 1985. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, and an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted are not required to be assigned if the new Bonds are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Bonds are to be registered in names and forms different from those in the inscriptions or assignments of the Treasury for (Bonds offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Bonds, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Bonds will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Bonds in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Bonds have been inscribed.

## 6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Bonds on full-paid allotments, and to maintain, service, and make payment on the Bonds.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of

holders or the Bonds. Public announcement of such changes will be promptly provided.

6.3. The Bonds issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

Gerald Murphy,

Acting Fiscal Assistant Secretary,

[FR Doc. 85-26555 Filed 11-4-85; 11:41 am]

BILLING CODE 4810-40-M

## [Department Circular—Public Debt Series—No. 31-85]

### Treasury Notes of September 30, 1989, Series N-1989

October 29, 1985.

#### 1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$6,750,000,000 of United States securities, designated Treasury Notes of September 30, 1989, Series N-1989 (CUSIP No. 912827 SU 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

#### 2. Description of Securities

2.1. The Notes will be dated November 1, 1985, and will accrue interest from that date, payable on a semiannual basis on March 31, 1986, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter

imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

#### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, October 29, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, October 28, 1985, and received no later than Friday, November 1, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the



list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a  $\frac{1}{8}$  of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks

will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

#### 4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

#### 5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. Must be made or completed on or before Friday, November 1, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, October 30, 1985. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, November 1, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

#### 6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-26558 Filed 11-4-85; 11:41 am]

BILLING CODE 4810-40-M



[Department Circular—Public Dept Series—No. 32-85]

# **Treasury Notes of October 15, 1992, Series G-1992**

October 29, 1985.

## **1. Invitation for Tenders**

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$6,250,000,000 of United States securities, designated Treasury Notes of October 15, 1992, Series G-1992 (CUSIP No. 912827 SV 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

## **2. Description of Securities**

2.1. The Notes will be dated November 1, 1985, and will accrue interest from that date, payable on a semiannual basis on April 15, 1986, and each subsequent 6 months on October 15 and April 15 through the date that the principal becomes payable. They will mature October 15, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by a State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Note will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of

Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

## **3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, October 30, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 29, 1985, and received no later than Friday, November 1, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the

United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a  $\frac{1}{8}$  of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, when the price at the average yield is over par.

## **4. Reservations**

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1,



and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

#### 5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5 must be made or completed on or before Friday, November 1, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, October 30, 1985. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, November 1, 1985. When payment has been submitted with the tender and the purchase price of the

Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expenses and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted

to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

#### 6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

FR Doc. 85-28554 Filed 11-4-85; 11:41 am]

BILLING CODE 4810-40-M



# Sunshine Act Meetings

Federal Register

Vol. 50, No. 215

Wednesday, November 6, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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### 1

#### INTERNATIONAL TRADE COMMISSION

##### [USITC SE-85-49]

**TIME AND DATE:** 10:00 a.m., Wednesday, November 20, 1985.

**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.

**STATUS:** Open to the public.

##### MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation No. 731-TA-234 [Final] (Carbon steel structural shapes from Norway)—briefing and vote.
6. Investigation No. 731-TA-246 [Final] (Low-fuming brazing wire and rod from New Zealand)—briefing and vote.
7. Any items left over from previous agenda.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-26535 Filed 11-4-85; 9:26 am]

BILLING CODE 7020-02-M

### 2

#### INTERNATIONAL TRADE COMMISSION

##### [USITC SE-85-49]

**TIME AND DATE:** 11:00 a.m., Friday, November 22, 1985.

**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.

**STATUS:** Open to the public.

##### MATTERS TO BE CONSIDERED:

1. Investigation No. 731-TA-240 and 241 [Final] (Photo albums and photo album filler pages from Hong Kong and the Republic of Korea)—briefing and vote.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Kenneth R. Mason, Secretary, (202) 523-0161.

Dated: November 1, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-26536 Filed 11-4-85; 9:26 am]

BILLING CODE 7020-02-M

### 3

#### INTERNATIONAL TRADE COMMISSION

##### [USITC SE-85-50]

**TIME AND DATE:** 10:00 a.m., Tuesday, November 26, 1985.

**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.

**STATUS:** Open to the public.

##### MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation No. 731-TA-207 [Final] (Cellular mobile telephones and subassemblies from Japan)—briefing and vote.
6. Any items left over from previous agenda.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Kenneth R. Mason, Secretary, (202) 523-0161.

Dated: November 1, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-26537 Filed 11-4-85; 9:26 am]

BILLING CODE 7020-02-M



The following is a list of supplies and materials required for the project. The list is organized into categories and includes quantities and unit prices where applicable.

**Category 1: General Supplies**

- Item 1: Paper (100 sheets) - \$0.50
- Item 2: Ink (1 bottle) - \$1.00
- Item 3: Pen (1 piece) - \$0.25
- Item 4: Eraser (1 piece) - \$0.10
- Item 5: Stapler (1 unit) - \$5.00
- Item 6: Staples (1 box) - \$0.50
- Item 7: Glue (1 bottle) - \$1.00
- Item 8: Scissors (1 pair) - \$0.50
- Item 9: Ruler (1 piece) - \$0.25
- Item 10: Calculator (1 unit) - \$2.00

**Category 2: Office Equipment**

- Item 11: Printer (1 unit) - \$10.00
- Item 12: Scanner (1 unit) - \$15.00
- Item 13: Fax Machine (1 unit) - \$20.00
- Item 14: Copier (1 unit) - \$30.00
- Item 15: Projector (1 unit) - \$40.00
- Item 16: Monitor (1 unit) - \$50.00
- Item 17: Keyboard (1 unit) - \$20.00
- Item 18: Mouse (1 unit) - \$10.00
- Item 19: Headset (1 unit) - \$15.00
- Item 20: Office Chair (1 unit) - \$100.00

**Category 3: Furniture**

- Item 21: Desk (1 unit) - \$150.00
- Item 22: Shelf (1 unit) - \$50.00
- Item 23: Cabinet (1 unit) - \$100.00
- Item 24: Table (1 unit) - \$120.00
- Item 25: Chair (1 unit) - \$80.00
- Item 26: Sofa (1 unit) - \$200.00
- Item 27: Bed (1 unit) - \$180.00
- Item 28: Mattress (1 unit) - \$100.00
- Item 29: Pillow (1 unit) - \$20.00
- Item 30: Blanket (1 unit) - \$30.00

**Category 4: Miscellaneous**

- Item 31: Cleaning Supplies (1 box) - \$10.00
- Item 32: First Aid Kit (1 unit) - \$15.00
- Item 33: Fire Extinguisher (1 unit) - \$50.00
- Item 34: Smoke Detector (1 unit) - \$20.00
- Item 35: Carbon Monoxide Detector (1 unit) - \$25.00
- Item 36: Security System (1 unit) - \$100.00
- Item 37: Alarm Clock (1 unit) - \$10.00
- Item 38: Clock (1 unit) - \$15.00
- Item 39: Mirror (1 unit) - \$20.00
- Item 40: Picture (1 unit) - \$10.00

The total cost for all items is \$1,200.00.



# Registered Federal Report

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Wednesday  
November 6, 1985

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## Part II

### Office of Management and Budget

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Proposed Revision of Circular A-88;  
Coordinating Audits and Negotiating  
Indirect Cost Rates at Educational  
Institutions



# OFFICE OF MANAGEMENT AND BUDGET

## Proposed Revision of Circular A-88; Coordinating Audits and Negotiating Indirect Cost Rates at Educational Institutions

**AGENCY:** Financial Management Division, OMB.

**ACTION:** Proposed Revision to Circular A-88 (Revised), Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions.

**SUMMARY:** This notice offers interested parties an opportunity to comment on a proposed revision to OMB Circular A-88, "Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions," dated November 27, 1979. The revision would also supersede Attachment F, subparagraph 2h, of Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," to the extent that it pertains to educational institutions.

**FOR FURTHER INFORMATION CONTACT:** Jack Sheehan, Financial Management Division (202) 395-3993.

Dated: October 18, 1985.

John J. Lordan,

Deputy Associate Director for Financial Management.

# OFFICE OF MANAGEMENT AND BUDGET

## Circular A-88 (Revised), "Coordinating Audits and Negotiating Indirect Cost Rates at Educational Institutions"

**Agency:** Office of Management and Budget.

**Action:** Proposed revision to Circular A-88, "Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions," dated November 27, 1979.

**Summary:** This notice offers interested parties an opportunity to comment on a proposed revision to Circular A-88, "Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions," dated November 27, 1979. The revision would also supersede Attachment F, subparagraph 2h, of Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," to the extent that it pertains to educational institutions.

This revision establishes policies for auditing educational institutions receiving Federal funds, and for establishing indirect cost rates with them. The provisions for establishing

indirect cost rates do not differ from the existing policy contained in Circular A-88, dated November 27, 1979.

The change in audit policy arises from a commitment made by OMB during Congressional consideration of the Single Audit Act of 1984, Pub. L. 98-502. At that time Congress agreed to exclude most colleges and universities from coverage under the Act.

OMB agreed to develop an audit policy for them consistent with the provisions of the Act.

The revised audit policy will require an independent annual audit of Federal awards in accordance with generally accepted government auditing standards and the provisions of Attachment A of the Circular. The preferred approach would be to coordinate this audit with the audit of the financial statements of the educational institution. The revised audit policy covers:

- scope of audit,
- internal control reviews,
- compliance reviews,
- relationship to other audit requirements,
- federal cognizant agency responsibilities,
- reporting illegal acts of irregularities,
- audit reports,
- audit resolution,
- retention of audit workpapers and reports,
- audit costs,
- sanctions, and
- auditor selection.

The Office of Management and Budget has, as yet, made no final decision with respect to the proposed revision. All interested parties are encouraged to make their views known.

For Further Information Contact: Jack Sheehan, Financial Management Division, Office of Management and Budget, Washington, D.C. 20503, (202) 395-3993.

Comments should be received within 60 days of this notice. All comments should be submitted to the above individual.

### Circular No. A-88—Revised

To the Heads of Executive Departments and Establishments

Subject: Coordinating Audits and Negotiating Indirect Cost Rates at Educational Institutions

**1. Purpose.** This Circular establishes policies for auditing educational institutions receiving Federal funds, and for establishing indirect cost rates with them. It also defines Federal responsibilities for implementing and monitoring these policies.

**2. Supersession.** This Circular revises OMB Circular A-88, "Indirect Cost

Rates, Audit, and Audit Followup at Educational Institutions," dated November 27, 1979. It also supersedes Attachment F, subparagraph 2h, of Circular A-110, "Uniform Requirements of Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," to the extent that it pertains to educational institutions.

### 3. Policies.

**a. Audits.** Educational institutions that receive Federal funds under grants, contracts, and other awards shall have an audit made in accordance with the provisions of Attachment A to this Circular.

**b. Indirect cost rates.** Educational institutions that need to establish indirect cost rates to assign costs to Federal grants, contracts, or other awards shall submit indirect cost proposals to a single cognizant agency for negotiation of such rates using procedures prescribed in Attachment B to this Circular.

### c. Cognizant agencies.

(1) One Federal agency will be assigned to each educational institution as the cognizant agency for negotiating indirect cost rates, assuring proper audits, and assuring resolution of audit findings that affect the programs of more than one agency.

(2) Federal cognizant agency assignments for carrying out the responsibilities in this Circular are set forth in a separate supplement. Government-owned facilities at educational institutions are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The Office of Management and Budget will coordinate changes in agency assignments.

(3) Reimbursement among Federal agencies for work done under this Circular may be made under Section 601, Economy Act of 1932, 31 U.S.C. 686.

**4. Effective date.** The provisions of this Circular are effective upon publication and shall apply to fiscal years of educational institutions that begin after December 31, 1985. Earlier implementation is encouraged. However, until this Circular is implemented the audit provisions of Attachment F to Circular A-110 shall continue to be observed.

**5. Inquiries.** Further information concerning this Circular may be obtained by contacting the Financial Management Division, Office of



Management and Budget, Washington, D.C. 20503, telephone (202) 395-3993.

James C. Miller III,

Director.

# Circular No. A-88—Attachment A

## Audits

### A. Policy.

1. Educational institutions that receive \$100,000 or more a year in Federal funds, exclusive of student financial assistance, shall have audits made in accordance with this Attachment.

2. Educational institutions that receive less than \$100,000 a year, or that administer a Federal student financial aid program, shall have an audit made in accordance with this Attachment or have an audit made of each Federal award.

### B. Scope of Audit.

1. *General.* The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards and the provisions of this Attachment. A recommended guideline for these audits will be developed by the Federal Government, and made available from the Government Printing Office. The preferred approach is to coordinate the audit of Federal awards with the audit of the financial statements of the educational institution. However, an alternative audit approach that tailors the scope of the audit to individual circumstances may be followed with prior approval of the cognizant agency.

2. *Internal control review.* The auditor shall determine and report on whether the institution has internal accounting and other control systems to provide reasonable assurance that it is carrying out Federal awards in compliance with their terms and conditions. As part of this review, the auditor shall:

- test whether the internal control systems are functioning in accordance with prescribed procedures; and
- examine the institution's system for monitoring subrecipients.

3. *Compliance review.* The following tests must be made in connection with compliance reviews.

- The audit shall include the selection and testing of a representative number of charges to Federal awards. The specific number of charges shall be determined by the auditor exercising professional judgment and considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits or other evaluations (e.g., inspections, program reviews, or system reviews

called for in the *Federal Acquisition Regulation*; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to provisions of the awards; and the potential impact of adverse findings.

b. In making the test of transactions the auditor shall determine whether the costs reported were allowable.

c. In addition to transaction testing, the auditor shall determine whether:

- those who received services or benefits were eligible to receive them;
- matching requirements, levels of effort, and other limitations were met;
- Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared;
- amounts claimed or used for matching were determined in accordance with Circular A-21, "Cost principles for educational institutions," and Attachment E, "Cost sharing and matching provisions of Circular A-110," "Uniform requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations."

d. The principal compliance requirements of the largest Federal programs may be ascertained by referring to a compliance supplement to be developed by the Federal Government and available from the Government Printing Office. For those programs not covered in the compliance supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and awards governing individual programs.

C. *Frequency of Audit.* Audits shall be made annually unless the institution is audited as part of a State or local government that has made other arrangements with the Federal Government.

D. *Relation to Other Audit Requirements.* Audits made in accordance with this Attachment shall be in lieu of any financial or financial compliance audit required under individual Federal programs. To the extent these audits provide Federal agencies with information and assurances they need to carry out their responsibilities, they shall rely upon and use such information. However, a Federal agency may request the cognizant agency to make any additional audits or reviews necessary to carry out its responsibilities under Federal law and regulation. Any additional audit effort shall be planned and carried out in such a way as to avoid duplication.

### E. Cognizant Agency Responsibilities.

A single cognizant Federal agency will be assigned for each educational institution. Other Federal agencies may participate with the cognizant agency. The cognizant agency shall have the following responsibilities:

- Ensure that audit are made and reports are received in a timely manner and in accordance with the requirements of this Attachment.
- Provide technical advice and liaison to institutions of higher education.
- Obtain or make quality control reviews of selected audits, and provide the results, when appropriate, to other interested organizations.
- Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal act. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the institution, of any violation of law within their jurisdiction.
- Advise the institution if an audit has not met the requirements set forth in this Attachment. In such instances, the institution will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the institution and Federal awarding agencies and make recommendations for followup action. Serious inadequacies or repetitive substandard performance by independent auditors shall be referred to appropriate professional bodies for disciplinary action.

6. Coordinate any Federal audit work that is in addition to audits made pursuant to this Attachment and ensure the additional work builds upon those audits.

7. Assure the resolution of audit findings that affect the program of more than one agency.

F. *Illegal Acts or Irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to the institution's management officials above the level of involvement. The institution, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual corrective actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

G. *Audit Reports.* An audit report must be prepared at the completion of the audit. The report is to be addressed to the institution's Board of Trustees, President, or other chief executive officer.



1. The audit report shall state that the audit was made in accordance with the provisions of this Attachment. The report shall include the following:

a. The auditor's report on the financial statements, if the statements were audited, and on supplementary information (a schedule of total expenditures by funding agency, and a schedule of expenditures for each student financial assistance program.)

b. The auditor's report on the study and evaluation of internal control systems. The report shall identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It shall also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

c. The auditor's report on compliance with significant administrative requirements, cost principles, and specific requirements of selected Federal awards. This report should contain the following:

(1) a statement of positive assurance with respect to those items tested for compliance;

(2) a statement of negative assurance on those items not tested;

(3) a summary of any instances of noncompliance; and

(4) an identification of total amounts questioned for each Federal award, as a result of noncompliance.

d. Auditor's comments on status of previously reported audit findings and any subrecipient audit findings.

2. The four parts of the audit report may be bound into a single document or presented at the same time as separate documents.

3. Any indication of fraud, abuse, or illegal acts that auditors become aware of, should normally be covered in a separate written report.

4. In addition to the audit report, the institution shall provide comments on the findings and recommendations in the report.

5. Reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the institution shall submit copies of the reports to each Federal department or agency that made awards to the recipient. Subrecipients shall submit copies to institutions that provided them with Federal funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

6. Institutions shall keep audit reports on file for three years after their issuance.

**H. Audit Resolution.** The cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency.

1. Resolution of findings that relate to the programs of a single Federal agency shall be the responsibility of the institution and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

2. Resolution shall be made within six months after receipt of a report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

**I. Audit Workpapers and Reports.**

Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request of the cognizant agency or the General Accounting Office, at the completion of the audit.

**J. Audit Costs.** The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A-21, "Cost principles for colleges and universities."

**K. Sanctions.** The cost of audits required by this Attachment may not be charged to Federal awards unless made in accordance with this Attachment. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

1. withholding a percentage of payments until the audit is completed satisfactorily;

2. withholding or disallowing overhead costs; and

3. suspending Federal awards until the audit is made.

**L. Auditor Selection.** In arranging for audit services, universities shall follow the procurement standards prescribed by Attachment O of Circular A-110. Institutions' policies, procedures, and guidelines shall include such provisions as may be necessary to ensure that small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practical opportunity to participate in contracts awarded to fulfill the audit requirements of this Attachment.

**M. Reporting.** Each cognizant Federal agency shall report to the Director of OMB on or before \_\_\_\_\_, and annually thereafter on the effectiveness of institutions in carrying out the provisions of the Attachment. The report must identify each institution that, in the opinion of the agency, is failing to comply with the Attachment.

**N. Regulations.** Each Federal agency shall include the provisions of this Attachment in its regulations.

#### Circular No. A-88—Attachment B

##### Indirect Cost Rates

**A. Purpose.** This Attachment provides policies and procedures for establishing indirect cost rates for grants, contracts, and other awards to educational institutions.

##### B. Policies.

1. **Negotiating indirect cost rates.** One Federal agency shall negotiate the indirect cost rate or rates at a single institution.

2. **Negotiating special rates.** Institutional services involving the use of highly complex and specialized facilities may in some cases require the negotiation of special rates. In these situations, the cognizant agency shall negotiate the special rates.

3. **Acceptance of rates.** The negotiated rates shall be accepted by all Federal agencies.

##### C. Administering Indirect Cost Policies.

1. **Procedure for establishing indirect cost rates.**

The cognizant agency shall arrange with the institution to provide copies of indirect cost proposals to all interested agencies. Agencies wanting such copies should notify the cognizant agency. Indirect cost rates shall be established by one of the following methods:

a. **Formal negotiation.** The cognizant agency shall advise agencies that have expressed a desire to participate of its intention to negotiate, and schedule a prenegotiation conference, if necessary. The cognizant agency shall then arrange a negotiation conference with the institution. If an agency does not wish to be represented in these meetings, the cognizant agency shall represent that agency.

b. **Other than formal negotiation.** This type of negotiation shall include cases where the institution and cognizant agency determine that agreement can be reached without a formal negotiation conference; for example, through correspondence, discussion, or use of the simplified method described in Circular A-21.



2. *Special considerations affecting negotiation.* An agency that has reason to believe that special operating factors affecting its awards necessitate separate rates will, provide prior notice to the cognizant agency and the institution, so that appropriate attention may be devoted to those factors. Circular A-21 provides for separate indirect cost rates when it is determined that a separate

rate differs significantly from a single rate, and that the volume of work to which such separate rate would apply is material in relation to other agreements.

3. *Formalizing determinations and agreements.* The cognizant agency will formalize all determinations or agreements reached with the institution and provide copies to other agencies having an interest.

*D. Disputes and Disagreements.*

Where the cognizant agency is unable to reach agreement with an institution with regard to indirect cost rates, the appeals system of the cognizant agency will be followed for resolution of the disagreement.

[FR Doc. 85-26320 Filed 11-5-85; 8:45 am]

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Wednesday  
November 6, 1985

## Part III

## Administrative Conference of the United States

Equal Access to Justice Act; Agency  
Implementation; Issuance of Draft  
Revised Model Rules; Notice



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Equal Access to Justice Act; Agency Implementation

**AGENCY:** Office of the Chairman, Administrative Conference of the United States.

**ACTION:** Issuance of Draft Revised Model Rules.

**SUMMARY:** In 1981, the Chairman, Administrative Conference of the United States, issued model rules for the guidance of Federal agencies in implementing the Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325 [46 FR 32900, June 25, 1981]. The Act, which provides for the award of attorney fees and other expenses to parties who prevail over the Federal government in certain administrative and court proceedings, was recently reauthorized and amended by Congress [Pub. L. 99-80, 99 Stat. 183]. These proposed revisions to the model rules reflect the changes in the law made by this legislation and are intended to assist agencies in amending their own regulations for implementation of the Equal Access to Justice Act. Alternative provisions suitable for use by contract appeals boards are included in the discussion section.

**FOR FURTHER INFORMATION CONTACT:** Mary Candace Fowler, Staff Attorney, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037; (202) 254-7065.

**DATES:** Comments must be received on or before December 6, 1985.

**ADDRESSES:** Interested persons are invited to submit written comments to the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Comments submitted will be available for public inspection from 9:00 AM to 5:30 PM Monday through Friday at the Administrative Conference.

**SUPPLEMENTARY INFORMATION:** On August 5, 1985, Pub. L. 99-80, which reauthorized and amended the Equal Access to Justice Act, became law. The Act provides for the award of attorney fees and other expenses to parties who prevail over the Federal government in certain administrative and court proceedings. The Act requires agencies conducting covered adjudications to establish uniform procedures for handling applications for fee awards, after consultation with the Chairman of the Administrative Conference of the United States. To facilitate this process, in 1981, the Chairman issued model

rules for federal agency implementation of the Equal Access to Justice Act, 46 FR 32900 (June 25, 1981), reprinted in Administrative Conference of the U.S., *Federal Administrative Sourcebook* (Office of the Chairman, 1985), at 353-84.

Since Pub. L. 99-80 made certain substantive changes to the Act, the Office of the Chairman has now reviewed the model rules in order to determine what revisions are required by the legislation. Based on this review, we proposed to make the changes described below. They are few and, in most cases, straightforward. However, some difficult issues are raised, and we would appreciate suggestions and comments, particularly with respect to the application of the rules of proceedings before boards of contract appeals.

The final revised rules will not be binding on agencies, since the Chairman's statutory responsibility is consultative only. However, the amended Act is already effective, and agencies will need to amend their own rules as soon as possible. We believe that revision of the ACUS model rules will facilitate this process while continuing to promote the uniformity of procedure contemplated by the Act.

#### Contract Appeals Board Proceedings

Special considerations are raised by application of the Act, for the first time,<sup>1</sup> to certain proceedings before agency boards of contract appeals. We believe the ACUS model rules, including the proposed revisions, should be generally workable for these proceedings as well as other agency proceedings covered by the Act. However, contract appeals boards have different personnel, procedures, and agency review structures from other agency proceedings, and we are aware of some instances in which the rules may need to be adapted for use by the boards. We encourage agencies promulgating rules for contract appeals board proceedings to suggest any other such changes they believe necessary, with the caveat that uniformity with other agencies' rules should be preserved whenever possible.

For agencies which conduct other proceedings covered by the Act and which also have contract appeals boards, an initial question will be whether to adopt separate rules for the contract appeals board or whether to

amend the existing rules to include board proceedings. In making this decision, agencies should take into account such factors as the structure of their existing rules and agency delegations of authority to promulgate rules. We suggest that agencies that amend existing rules to include contract appeals board proceedings add to their contract appeals board procedural rules a cross-reference to the Equal Access to Justice Act rules.

Another special problem is applying the Act and rules to contract appeals boards involves the identity of the "agency" and the "adjudicative officer" in these proceedings. Ordinarily, panels of one or more Board members decide cases on behalf of the Board, and generally these decisions are final and appealable to the courts, although either party may seek reconsideration. (The GSA Board of Contract Appeals, on the other hand, is one that permits review of a panel's decision by the entire Board in exceptional cases. 48 CFR Chapter 5, Appendix B, Rule 30.) In these circumstances, it would be inappropriate to interject a level of "agency" review when the "agency" does not review the substantive decisions involved. Thus we believe the final decision of the "agency" referred to in Pub. L. 99-80 should, in this case, be the final decision of the agency board of contract appeals.

This structure also makes it difficult to determine the identity of the "adjudicative officer," defined in the Act as "the deciding official . . . who presided at the adversary adjudication." When cases are decided initially by a panel of contract appeals board members, the panel would be the "deciding official." Yet one member may have "presided" by taking evidence, deciding procedural motions, etc. And some boards use hearing examiners who are not members of the board to take evidence and recommend decisions. In order to fit decisions under the Equal Access to Justice Act most smoothly into existing contract appeals board procedure, we have tentatively concluded that the individual or panel who renders the first formal decision for the Board (which, as noted above, may also be its final decision) should be treated as the "adjudicative officer." Of course, if the panel relies heavily on the opinion of one member (or a hearing examiner) who took evidence in making its substantive decision, it would be free to do so (and probably should) in making its attorney fee decision as well. Moreover, where the model rules refer to an "adjudicative officer" making procedural rulings, rather than

<sup>1</sup> Although some contract appeals boards initially asserted jurisdiction to award fees under the Act, see, e.g., *Claude C. Wood Company*, U.S. Dept. of Agriculture Board of Contract Appeals, ACBCA No. 79-196-1 (August 31, 1982), the Court of Appeals for the Federal Circuit rules that the appeals boards could not make awards. *Fidelity Construction Co. v. United States*, 700 F.2d 1379 (Fed. Cir. 1983).



substantive ones, contract appeals boards may wish to substitute a reference to the presiding officer rather than the deciding panel, if that officer would ordinarily have authority to take the type of action contemplated by the rule. We invite comment on whether our resolution of these questions is the best one.

Contract appeals boards adopting separate Equal Access to Justice Act rules which will not apply to any other type of agency proceeding may wish to streamline the rules by eliminating some material in the existing model rules that will be irrelevant to their proceedings and simplifying some other provisions. Suggestions for some such modifications are included in the section-by-section analysis which follows.

#### Section-by-Section Analysis

##### Subpart A—General Provisions

The nine rules in this subpart set forth the basic substance of the Equal Access to Justice Act; they contain most of the language that must be revised to conform to Pub. L. 99-80. Sections 0.106-0.109, dealing with the standards for determining the amount of allowable fees, the procedures for raising the \$75-per-hour attorney fee ceiling, situations in which awards should be made against other agencies, and the technical delegations of authority necessary to implement the rules, are unchanged. Those contract appeals boards that do not hear cases involving agencies other than their own may wish to eliminate § 0.108.

Section 0.101, stating the purpose of the Act and rules, has been amended to refer to the agency's "position" rather than its "position in the proceeding." This change corresponds to statutory amendments, discussed in more detail below, intended to clarify that the position that must be substantially justified is not limited to the litigation position alone.

##### 0.102 When the Act applies.

Public Law 99-80 provides that its amendments apply to cases pending on or commenced after the date of enactment, which is August 5, 1985. In addition, the law applies to cases commenced on or after October 1, 1984 and finally disposed of before August 5, 1985, provided applications for fees were filed within 30 days after August 5, and to adversary adjudications pending on or commenced on or after October 1, 1981, in which fee applications were timely filed and dismissed for lack of jurisdiction. This last provision is intended to revive certain contract appeals board cases dismissed under

the provisions of the original Act.<sup>2</sup> The draft section covers all of these cases; however, many agencies may have no cases of the second or third type, and thus might wish to drop the second sentence of the draft rule.

A question arises concerning cases commenced before October 1, 1984, and finally disposed of before August 5, 1985, in which applications for fees were timely filed and remain pending. Is it necessary to preserve the old rules to apply to these proceedings? (The original Act explicitly applied to cases pending on October 1, 1984 regardless of when they were completed.) We have tentatively concluded that a simpler and better approach would be to treat these cases as "pending" on the date of enactment of Pub. L. 99-80. In *Bradley v. Board of Education of the City of Richmond*, 418 U.S. 606 (1974), the U.S. Supreme Court upheld an award of attorney fees even though the only part of the case still pending at the time the statutory fee provision was enacted was the application for fees. The situation here is analogous to that in *Bradley*. As a practical matter, the determination that these cases fall under the new statute would seldom be of any consequence; the eligibility standards represent the only truly significant difference between the old Act and the amendments in this context, and parties who applied for fees before enactment of Pub. L. 99-80 will have assumed that the lower eligibility ceilings would apply. Technically, however, this approach would greatly simplify the agencies' rulemaking task, since it eliminates the need to preserve old provisions for a few cases while adopting new ones for others. We invite comments on whether there are legal or practical difficulties with this approach.

##### 0.103 Proceedings covered.

This section describes the various proceedings covered by, and excepted from, the Act. The revision adds a reference to contract appeals board proceedings. A contract appeals board adopting separate rules for Equal Access to Justice Act applications may wish to include an alternative provision

<sup>2</sup> The draft model rule follows the language of the statute, which is not expressly limited to contract appeals board proceedings, although the heading of the statutory section refers specifically to those proceedings. If problems should arise involving the refiling of other applications which were properly dismissed for lack of jurisdiction, and as to which the provisions of the Act have not changed (for example a case in which a reviewing court, rather than the agency, had jurisdiction under 5 U.S.C. 504(c)(1) and 28 U.S.C. 2412(d)(3)), presumably the agency can simply redetermine the application on the original grounds.

such as the following instead of the longer one:

"The Act applies to appeals of decisions made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before [the particular contract appeals board] as provided in section 8 of that Act (41 U.S.C. 607)."

At this time we are also suggesting a clarifying revision to paragraph (b) of § 0.103 of the model rules. The original provision, stating that an agency might designate a specific proceeding as a covered proceeding even though that type of proceeding was not identified in its rules, was intended to permit agencies to defer particularly difficult decisions about which proceedings were "under 5 U.S.C. 554." However, it can be read to suggest that agencies have the power to award fees in proceedings that are not explicitly covered by the statute. Accordingly, we propose to eliminate the ambiguous language.

##### 0.104 Eligibility of applicants.

Public Law 99-80 raised the eligibility ceilings for the Act to \$2 million net worth for individuals and \$7 million for businesses and organizations (other than tax-exempt organizations and agricultural co-operatives, which remain exempt from the net worth limitations). It also added units of local government to the entities that can receive awards, if they meet the limits on net worth and number of employees. Revised § 0.104 reflects these changes.

The legislative history of Pub. L. 99-80 makes clear that "any general or special purpose district organized under state law (such as a school district, sewer district, irrigation district or planning district)" is to be treated as a separate unit of local government. House of Representatives Comm. on the Judiciary, *Report to Accompany H.R. 2378*, H.R. Rep. 99-120, 99th Cong. 1st Sess. (May 15, 1985), at 14-15. Thus § 0.104(f) of the model rules, recommending the aggregation of net worth and number of employees of "affiliated entities" for purposes of eligibility, should not be construed to require aggregation of these districts with the governments of the municipalities they serve. We believe it is sufficiently clear that the provision, which refers to "own[ing] or control[ing] a majority of the voting shares or other interest" of an entity, does not apply that we are not proposing to revise it.

On the other hand, we don't believe that every agency of local government should be treated separately simply because it has a separate departmental organization. For example, a police department or housing authority that



serves only within the boundaries of a particular municipality rather than a separate geographic "district," and whose personnel are responsible to the leadership of that municipality, would be treated as part of the municipality rather than as a separate unit of local government. Should the rules provide explicit guidelines on this, our should controversies be resolved on a case-by-case basis?

A more difficult question concerns determination of the "net worth" of a unit of government. The draft rules contain no provision on the specifics of this, as they provide no details on determination of the net worth of other applicants. However, the net worth concept is generally much clearer as applied to an individual or business than it is as applied to a unit of government. There may be substantial benefit to having governmentwide uniformity on this difficult issue, so that governmental units that may be involved in litigation with more than one agency will be able to measure their potential eligibility against a single standard. We strongly urge interested persons to provide suggestions as to whether the rules should establish such a standard means of determining governmental net worth and, if so, what the standard should be.

#### 0.105. Standards for awards.

A new second sentence in this section would incorporate the provision of Pub. L. 99-80 that "position of the agency" includes any action or failure to act on which the proceeding is based, in addition to the agency's litigation position. In the vast majority of administrative situations, where the government is generally the party that commences litigation, the "action on which the proceeding is based" will be the agency's litigation position, i.e., the legal and factual arguments which make up its case. One possible exception would be in contract appeals board proceedings, in which a contracting officer might rule against a contractor's claim and then concede the claim immediately when the contractor appeals to the board. In this case, the contracting officer's original position in rejecting the claim should be considered as well as the litigation position in determining whether the contractor is entitled to fees for filing the appeal. To provide for this situation and any similar ones that may arise, we plan to incorporate the statutory language into the model rules.

We also propose to eliminate the provision that agency counsel may show its position is substantially justified by demonstrating that it is "reasonable in

law and fact." H.R. Rep. 99-120 explicitly rejects reasonableness as the standard, noting that "the test must be more than mere reasonableness." H.R. Rep. 99-120, at 9-10. Our review of the report and of the Congressional floor debates on Pub. L. 99-80 did not reveal any formula to serve as a substitute for this language (indeed, on one point the floor statements challenged the House report's interpretation of substantial justification, compare H.R. Rep. 99-120, at 9-10, with 131 Cong. Rec. H4763 (June 24, 1985) and 131 Cong. Rec. S 9992-93 (July 24, 1985)). Under the circumstances, we believe we should leave this issue to be resolved on a case-by-case basis.

#### Subpart B—Information Required from Applicants

The four sections of this subpart detail the contents of the fee application, including the net worth exhibit and the documentation of fees and expenses, and state when an application may be filed. The only sections in the subpart requiring general revision are § 0.201(a), in which the words "in the proceeding" would be removed (for the same reason as in § 0.101), and § 0.201(b), in which the \$2 and \$7 million ceilings of Pub. L. 99-80 will be substituted for the previous \$1 and \$5 million figures. Contract appeals boards are invited to comment on whether § 0.204(c), defining "final disposition" of a proceeding, corresponds adequately to their own procedures. Another issue that may be of concern to contract appeals boards involves the bifurcation of proceedings. It is not unusual for a contract appeals board to resolve the issue of liability in a case and then proceed to determination of the amount due in a separate stage of the proceeding. We believe these proceedings can be handled under the existing rule. An applicant who has won the entitlement portion of the case may well be eligible to file a fee application by virtue of prevailing in a "significant and discrete substantive portion of the proceeding"; this might turn on the facts of the particular case. On the other hand, assuming the entitlement and amount portions are still separate parts of the same proceedings, the applicant would also have the option of waiting until completion of the entire proceeding before filing a fee application. Are there problems inherent in the application of the rules to bifurcated proceedings that we haven't anticipated?

#### Subpart C—Procedures for Considering Applications

The ten sections of Subpart C outline the procedures for determining whether

applicants will receive awards. Section 0.301 states the filing and service requirements for documents §§ 0.032-0.304 describe answers, reply pleadings, and comments by third parties; § 0.305 discusses settlement procedures; and § 0.306 details the circumstances in which the adjudicative officer may order further proceedings. Sections 0.307-0.310 cover the adjudicative officer's decision, agency and judicial review, and payment. Of awards of these, only § 0.306 requires revision, except in the case of contract appeals board proceedings, for which changes to §§ 0.307 and 0.308 may also be required.

#### 0.306 Further proceedings.

This section details the circumstances in which adjudicative officers may order further proceedings, such as oral argument, written submissions, or evidentiary hearings, on applications for fees. Pub. L. 99-80 provides that determinations of substantial justification must be made "on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees . . . are sought," and a sentence would be added to reflect this statutory provision. While the new statutory provision clearly prohibits discovery or evidentiary proceedings to determine substantial justification, the legislative history indicates that the administrative record includes affidavits submitted with the fee application and the government's answer, as well as the underlying record. H.R. Rep. 99-120 *supra*, at 13-14. We believe that the portion of this section authorizing the adjudicative officer to require written submissions, insofar as it applies to the substantial justification requirement, can be interpreted consistently with this distinction without being revised i.e., the writers submissions would be in the nature of additional legal argument or clarification of matter contained in an affidavit, but not discovery of new material. We invite comment on whether the rule should be more specific. In addition, § 0.306 would still authorize the adjudicative officer to hold an evidentiary hearing as to issues other than substantial justification, since a serious factual dispute may occasionally arise concerning an issue such as eligibility.

Sections 0.307 and 0.308 of the model rules describe a decision-making structure, with initial decisions followed by discretionary agency review, that may not be applicable to contract appeals boards, as noted above. A possible alternative approach would be



to revise the beginning of § 0.307, and all of § 0.308, as follows:

#### 0.307 Decision.

The Board shall issue its decision on the application within [ ] days after completion of proceedings on the application. The decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions. . . .

#### 0.308 Reconsideration.

Either party may seek reconsideration [and/or full Board review, if otherwise available] of the decision on the fee application in accordance with [cross-reference to rule on reconsideration of contract appeals board decisions.]

In addition, contract appeals boards that do not hear cases involving agencies other than their own may wish to eliminate the last sentence of § 0.307.

The test of the draft revised model rules follows. For the convenience of readers, we have reprinted the entire model rules, including the proposed revisions, even though some sections have not been changed. (Revised material has been printed in italics.)

#### Draft Model Rules

### PART 0—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

#### Subpart A—General Provisions

##### Sec.

- 0.101 Purpose of these rules.
- 0.102 When the Act applies.
- 0.103 Proceedings covered.
- 0.104 Eligibility of applicants.
- 0.105 Standards for awards.
- 0.106 Allowable fees and expenses.
- 0.107 Rulemaking on maximum rates for attorney fees.
- 0.108 Awards against other agencies.
- 0.109 Delegations of authority.

#### Subpart B—Information Required from Applicants

- 0.201 Contents of application.
- 0.202 Net worth exhibit.
- 0.203 Documentation of fees and expenses.
- 0.204 When an application may be filed.

#### Subpart C—Procedures for Considering Applications

- 0.301 Filing and service of documents.
- 0.302 Answer to application.
- 0.303 Reply.
- 0.304 Comments by other parties.
- 0.305 Settlement.
- 0.306 Further proceedings.
- 0.307 Decision.
- 0.308 Agency review.
- 0.309 Judicial review.
- 0.310 Payment of award.

Authority: Sec. 203(a)(1), Pub. L. 99-481, 94 Stat. 2325 [5 U.S.C. 504(c)(1)]; Pub. L. 99-80, 99 Stat. 183.

#### Subpart A—General Provisions

##### § 0.101 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before this agency. *An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust.* The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this agency will use to make them.

##### § 0.102 When the Act applies.

*The Act applies to any adversary adjudication pending or commenced before this agency on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the agency within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.*

##### § 0.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by this agency. These are (1) adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding, and (2) *appeals of decisions made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before agency boards of contract appeals as provided in section 8 of that Act (41 U.S.C. 607).* Any proceeding in which this agency may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." For this agency, the types of proceedings generally cover include: [to be supplied by the agency]

(b) *This agency's failure to identify a type of proceeding as an adversary adjudication shall not preclude the*

*filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.*

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

##### § 0.104 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows.

(1) *An individual with a net worth of not more than \$2 million;*

(2) *The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 employees;*

(3) *A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;*

(4) *A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and*

(5) *Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than \$7 million and not more than 500 employees.*

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its



affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

#### *§ 0.105 Standards for awards.*

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed with substantially justified. *The position of the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency counsel.*

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

#### *§ 0.106 Allowable fees and expenses.*

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney, or agent under these rules may exceed \$75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which this agency pays expert witnesses, which is [to be supplied by the agency]. However, an award may also include the reasonable expenses of the attorney,

agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

#### *§ 0.107 Rulemaking on maximum rates for attorney fees.*

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), this agency may adopt regulations providing that attorney fees may be awarded at a rate higher than \$75 per hour in some or all of the types of proceedings covered by this part. This agency will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with this agency a petition for rulemaking to increase the maximum rate for attorney fees, in accordance with [cross-reference to, or description of, standard agency procedure for rulemaking petitions.] The petition should identify the rate the petitioner believes this agency should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. This agency will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

#### *§ 0.108 Awards against other agencies.*

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before this agency and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

#### *§ 0.109 Delegations of authority.*

The agency delegates to [identify appropriate agency unit or officer] authority to take final action on matters pertaining to the Equal Access to Justice Act, 5 U.S.C. 504, in actions arising under [list statutes or types of proceedings.] This agency may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases to other subordinate officials or bodies.

#### **Subpart B—Information Required From Applicants**

##### *§ 0.201 Contents of application.*

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) *The application shall also include a statement that the applicant's net worth does not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:*

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant



wishes this agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

#### *§ 0.202 Net worth exhibit.*

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 104(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)-(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with this agency's established procedures under the Freedom of Information Act [insert cross reference to agency FOIA rules].

#### *§ 0.203 Documentation of fees and expenses.*

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

#### *§ 0.204 When an application may be filed.*

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after this agency's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of: (1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final; (2) issuance of an order disposing of any petitions for reconsideration of this agency's final order in the proceeding; (3) if no petition for reconsideration is filed, the last date on which such a petition could have been filed; or (4) issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

#### **Subpart C—Procedures for Considering Applications**

##### *§ 0.301 Filing and service of documents.*

Any application for an award or other pleading or document related to an application shall be filed and served on

all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 0.202(b) for confidential financial information.

##### *§ 0.302 Answer to application.*

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extension may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 0.306.

##### *§ 0.303 Reply.*

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceeding under § 0.306.

##### *§ 0.304 Comments by other parties.*

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

##### *§ 0.305 Settlement.*

The application and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a



settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

**§ 0.306 Further proceedings.**

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the

additional proceedings are necessary to resolve the issues.

**§ 0.307 Decision.**

The adjudicative officer shall issue an initial decision on the application within [to be supplied by the agency] days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

**§ 0.308 Agency review.**

Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the agency may decide to review the decision on its own initiative, in accordance with [cross-reference to agency's regular review procedures.] If neither the applicant nor agency counsel seeks review and the agency does not take review on its own initiative, the initial

decision on the application shall become a final decision of the agency [30] days after it is issued. Whether to review a decision is a matter within the discretion of the agency. If review is taken, the agency will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

**§ 0.309 Judicial review.**

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

**§ 0.310 Payment of award.**

An applicant seeking payment of an award shall submit to the [comptroller or other disbursing official] of the paying agency a copy of the agency's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. [Include here address for submissions at specific agency.] The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: October 31, 1985.

Marshall J. Breger,  
Chairman.

[FR Doc. 85-26372 Filed 11-5-85; 8:45 am]

BILLING CODE 6110-01-M



# **Federal Register**

Wednesday  
November 6, 1985

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## **Part IV**

### **Department of the Interior**

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#### **Minerals Management Service**

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**Proposed Outer Continental Shelf Lease  
Sale 86 in the Shumagin Area; Call for  
Information and Nominations and Notice  
of Intent To Prepare Environmental  
Impact Statement; Notice**



## Description of area

In general, the Shumagin planning area lies southeast of the Alaska Peninsula. It is bounded on the east by 57° N. latitude at 156° W. longitude; thence south to 51° N. latitude, thence west to 159° W. longitude; thence south to 50° N. latitude; thence west to 165° W. longitude; thence north until it intersects the 3-geographical-mile line of Unimak Island; thence north and east along the 3-geographical-mile line until it meets 57° N. latitude thence east to the point of origin. The area covers approximately 15,054 blocks or 83 million acres.

Boundaries of the Call area are shown on the attached page size map. The larger standard Call for Information Map is available free of charge from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, MMS, P.O. Box 101159, 945 E. 36th Avenue, Anchorage, Alaska 99510-1159, telephone (907) 261-4080. Indications of interest and comments are requested for all Federal acreage within the boundaries of the Call area.

The following list identifies the Official Protraction Diagrams which comprise the Call area. The diagrams may be purchased for \$2.00 each from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated above.

NM 3-2	--	(Approved March 17, 1982), all Federal blocks
NM 3-4	--	(Approved March 17, 1982), all Federal blocks
NM 4-1	--	(Approved March 17, 1982), all Federal blocks
NM 4-2	--	(Approved March 17, 1982), all Federal blocks
NM 4-3	--	(Approved March 17, 1982), all Federal blocks
NM 3-2, Cold Bay and block 1006	--	(Approved September 30, 1976) blocks 964, 1006, 1007,
NM 3-4, False Pass except: 1-11, 45-51, 53-54, 89-94, 133-137, 177-181, 221-224, 265-266, 303-312, and 353-354.	--	(Approved June 4, 1984), all Federal blocks
NM 3-6, Sanak Bank	--	(Approved October 12, 1977), all Federal blocks
NM 3-8	--	(Approved December 1, 1977), all Federal blocks
NM 4-1, Stepovak Bay except: 1-6, 43-47, and 89-90.	--	(Approved October 6, 1976), all Federal blocks
NM 4-2, Mitrofanof Island	--	(Approved July 15, 1976), all Federal blocks
NM 4-3, Shumagin Bank	--	(Approved February 3, 1977), all Federal blocks
NM 4-4, Shumagin Bank	--	(Approved February 18, 1977), all Federal blocks
NM 4-5, Derikson Seamount	--	(Approved October 12, 1977), all Federal blocks
NM 4-6, Kallis Knoll	--	(Approved October 12, 1977), all Federal blocks
NM 4-7, Sirius Seamount	--	(Approved December 1, 1977), all Federal blocks
NM 4-8	--	(Approved May 10, 1984), all Federal blocks
NM 4-8, Satvik Island except: 1-3, 45-46, and 89.	--	(Approved August 1, 1975), all Federal blocks

## Instructions on Call

The standard Call map delineates the Call area and shows the area identified by the Minerals Management Service (MMS) as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate

4210-492

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
MINERALS MANAGEMENT SERVICE  
Shumagin  
Lease Sale 86  
Call for Information and Nominations  
and

## Notice of Intent to Prepare an Environmental Impact Statement

## CALL FOR INFORMATION AND NOMINATIONS

## Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) [43 U.S.C. 1301-1343], as amended (92 Stat. 629), and regulations appearing at 30 CFR 256.23, with regard to proposed Outer Continental Shelf (OCS) Lease Sale 86 in the Shumagin area tentatively scheduled for December 1987.

This initial information gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decision points in the leasing process. It should be recognized that this notice does not indicate a preliminary decision to lease in the area described below. Responses to this Call will assist the Secretary of the Interior in determining if the presale process for this sale should be continued, cancelled, or deferred for consideration in a future 5-year schedule.

If a decision is made to proceed with the presale process for this sale the information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Thus, it may be possible to make key decisions in connection with the next step in the planning process--Area Identification--to resolve conflicts by deleting areas where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the environmental impact statement (EIS). The Area Identification is scheduled for February 1986. A third purpose for this Notice is to use the comments collected to initiate scoping of the EIS, which will include public meetings, and to identify and analyze alternatives to the proposed action. (A Notice of Intent to prepare an Environmental Impact Statement is located later in this document.) Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and the Alaska Coastal Management Program (ACMP).



## Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (40 CFR 1501.7), and the OCSLA, as amended. A final Notice of Sale will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede this sale, proposed for 1987:

Comments due on the Call:	December 1985
Area Identification:	February 1986
Scoping comments due:	February 1986
Draft EIS published:	January 1987
Hearings on draft EIS held:	February 1987
Final EIS published:	July 1987
Proposed Notice of Sale published:	August 1987
Governor's comments due on proposed Notice:	October 1987
Final Notice of Sale published:	November 1987
Sale:	December 1987

## Existing Information

Information already available includes that gathered during the EIS process for the 5-Year Oil and Gas Leasing Program. In addition, comments previously received by the DOI from State and local governments, other Federal agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be used. The following is a list of other information which will be available to the DOI for decisions regarding OCS Lease Sale 86.

## Alaska Indexes

1. Alaska Index, December 1981 through April 1983, prepared by NIS.
2. Alaska Index, May 1983 through January 1985, prepared by NIS.

## Shumagin Planning Area - Completed Environmental Studies

1. Identification, Documentation and Definition of Coastal Migratory Bird Habitats in Alaska, Alaska Department of Fish and Game, Research Unit No. 3, September 1980.

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gas. Respondents are requested to indicate interest in and comment on any gas, or all of the Federal acreage within the boundaries of the Call area that they wish to have included in the Shumagin Lease Sale 86 area. Although the identities of those submitting nominations become a matter of public record, the individual indications of interest are guaranteed privileged treatment. Those indicating such interest are required to do so on the standard Call for Information Map, available free from the address stated under "Description of Area." Interest should be shown by outlining the area(s) of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2, or 3). If there are areas within the Call area for which respondents have no interest, no priority should be assigned to them. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Individual companies will be held proprietary and will be used as a criterion in determining the area to be analyzed in the EIS. In addition to indications of interest by respondents, further consideration of areas for analysis in the EIS will be based on hydrocarbon potential, and a balancing with environmental, economic, and multiple use considerations.

Comments are also sought from all interested parties about particular geological, environmental, biological, archaeological, or socioeconomic conditions or conflicts, or other information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sale and the ANP, if possible, these comments should identify specific ANP policies of concern, the nature of the conflict foreseen, and steps that the NIS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to outline the subject area on the standard Call map.

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Indications of Interest for Leasing for the Call for Information and Nominations for Shumagin Lease Sale 86" or "Comments on the Call for Information and Nominations for the Shumagin Lease Sale 86," as appropriate. The original standard Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated above under "Description of Area." Two copies of the standard Call map showing interest and any comments should also be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Mail Stop 645, Washington, D.C. 20240. Hand deliveries in the Washington, D.C., area may be made to the Chief, Offshore Leasing Management Division, Room 2523, Department of the Interior, 10th and C Sts., N.W., Washington, D.C.

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2. The Distribution, Abundance and Diversity of the Epifaunal Benthic Organisms in Two Bays (Alitak and Ugak) of Kodiak Island Alaska, University of Alaska, Fairbanks, Research Unit No. 5, 1977.
3. Distribution, Abundance, Community Structure, and Trophic Relationships of the Nearshore Benthos of the Kodiak Shelf, Cook Inlet, Northeast Gulf of Alaska and the Bering Sea, University of Alaska, Research Unit No. 5, 1978.
4. Razor Clam Distribution and Population Assessment Study, Alaska Department of Fish and Game, Research Unit No. 24, April 1977.
5. Assessment of Potential Interaction of Micro-Organisms and Pollutants Resulting from Petroleum Development on the Outer Continental Shelf in the Gulf of Alaska and Cook Inlet, University of Louisville, Research Unit No. 29/30, December 1982.
6. A Description and Numerical Analysis of the Factors Affecting the Processes of Production in the Gulf of Alaska, University of Washington, Research Unit No. 58, April 1977.
7. An Annotated Bibliography on Non-salmonid Pelagic Fishes of the Gulf of Alaska and Eastern Bering Sea, Northwest Fisheries Center/NOAA, Research Unit No. 64, September 1976.
8. Seasonal Distribution and Relative Abundance of Marine Mammals in the Western Gulf of Alaska, National Marine Fisheries Service/NOAA, Research Unit No. 68, May 1982.
9. Diving of Sea Otters, WTM Oregon Inc., Research Unit No. 71, December 1980.
10. Effects of Petroleum Hydrocarbons on Alaskan Aquatic Organisms—A Comprehensive Review of All Oil-Effects Research on Alaskan Fish and Invertebrates Conducted by the Alaska Bay Laboratories, National Marine Fisheries Service/NOAA, Research Unit No. 72, May 1983.
11. Sublethal Effects of Petroleum Hydrocarbons and Trace Metals, Including Biotransformation, as Reflected by Morphological, Chemical, Physiological, and Behavioral Indices, National Marine Fisheries Service/NOAA, Research Unit No. 73, July 1982.
12. Assessment of Oil Spill Risk to Birds, University of California-Irvine, Research Unit No. 83, August 1982.
13. Simulation Modeling of Marine Bird Populations: Energetics, Food Consumption, and Sensitivity to Perturbations, Oregon State University/University of New Mexico, Research Unit No. 106, 1982.
14. Acute Toxicity-Pacific Herring Koe-Gulf of Alaska, University of Alaska Research Unit No. 123, March 1977.
15. Gulf of Alaska Shelf Circulation, Pacific Marine Environmental Laboratory/NOAA, Research Unit No. 138/139/147, January 1980.
16. Numerical Studies, Pacific Marine Environmental Laboratory/NOAA, Research Unit No. 140, September 1978.
17. Distribution and Elemental Composition of Suspended Matter in Alaskan Coastal Waters, Pacific Marine Environmental Laboratory/NOAA, Research Unit No. 152, September 1980.
18. Low Molecular Weight Hydrocarbon Concentrations (C1-C4), Alaskan Continental Shelf, 1975-1979; MJA Data Report EML PMEL-2, Pacific Marine Environmental Laboratory/NOAA, Research Unit No. 153, December 1982.
19. Natural Distribution of Trace Heavy Metals on the Alaskan Shelf, University of Alaska, Research Unit No. 162, March 1979.
20. Demersal Fish and Shellfish Resources of the Gulf of Alaska from Cape Spencer to Unalak Pass 1946-1976 (4 Vols.), Northwest and Alaska Fisheries Center/NOAA, Research Unit No. 174, December 1977.
21. Baseline Study of Microbial Activity in the Beaufort Sea and Gulf of Alaska of Crude Oil Degradation by Psychrophilic Microorganisms, Oregon State University, Research Unit No. 150, December 1980.
22. Morbidity and Mortality of Key Marine Mammal Species, University of Alaska, Research Unit No. 104/611, September 1980.
23. Biology of the Harbor Seal-Phoca vitulina richardsi in the Gulf of Alaska, Alaska Department of Fish and Game, Research Unit No. 229, September 1979.
24. Preparation of Hydrodynamical-Numerical and 3-Parameter Seal-Mesh Atmospheric Models for Coastal Waters in Gulf of Alaska, Naval Environmental Prediction Research Facility, Research Unit No. 235, Progress Report-Murch 1976.
25. Ecology and Behavior of Southern Hemisphere Shearwaters (Genus Puffinus) and other Seabirds when over the Outer Continental Shelf of the Bering Sea and the Gulf of Alaska during the Northern Summer, University of Calgary, Research Unit No. 239, October 1982.
26. Population Assessment, Ecology, and Trophic Relationships of Stellar Sea Lions in the Gulf of Alaska, Alaska Department of Fish and Game, Research Unit No. 243, June 1982.
27. Hydrocarbons: Natural Distribution and Dynamics on the Alaskan Outer Continental Shelf: University of Alaska, Research Unit No. 275, February 1982.
28. Microbial Release of Soluble Tract Metals from Oil-Impacted Sediments, University of Alaska, Research Unit No. 275, March 1976.
29. Preparation of Illustrated Keys to Skeletal Remains and Otoliths of Forage Fish, University of Alaska, Research Unit No. 285, March 1976.



30. Circulation and Water Masses in the Gulf of Alaska, University of Alaska, Research Unit No. 165, March 1981.
31. Determine the Frequency and Pathology of Marine Fish Diseases in the Bering Sea, Gulf of Alaska, and Beaufort Sea, National Marine Fisheries Service/NOAA, Research Unit No. 332, January, 1986.
32. Pelagic Distribution and Abundance of Seabirds in the Gulf of Alaska and Eastern Bering Sea, U.S. Fish and Wildlife Service, Research Unit No. 337, 1983.
33. Catalog of Seabird Colonies in Alaska, U.S. Fish and Wildlife Service, Research Unit No. 338/343, October 1978.
34. An Annotated Bibliography of Literature on Alaska Water Birds, U.S. Fish and Wildlife Service, Research Unit No. 339, December 1980.
35. Migration of Birds in Alaska Marine Habitats, U.S. Fish and Wildlife Service, Research Unit No. 340, May 1976.
36. Feeding Ecology of Marine Birds in the Nearshore Waters of Kodiak Islands, U.S. Fish and Wildlife Service, Research Unit No. 341/346, October 1986.
37. Marine Climatology of the Gulf of Alaska-Vol. I, National Climatic Center/Arctic Environmental Information and Data Center, Research Unit No. 347, 1977.
38. Alaska Marine Ichthyoplankton Key, University of Washington, Research Unit No. 349, September 1976.
39. Review of Salmonid Data, University of Washington, Research Unit No. 353, December 1976.
40. Physical Oceanography of the Gulf of Alaska, National Marine Fisheries Service/NOAA, Research Unit No. 357, April 1976.
41. Coastal Meteorology in the Gulf of Alaska, Pacific Marine Environmental Laboratory/NOAA, Research Unit No. 367, June 1980.
42. Transport, Retention, and Effects of the Water-Soluble Fraction of Cook Inlet Crude Oil in Experimental Food Chains, National Marine Fisheries Service/NOAA, Research Unit No. 389, August 1978.
43. Radiometric Spectral Response of Oil Films, WPL/NOAA, Research Unit No. 399, July 1977.
44. Bioavailability of Oil to Intertidal Organisms, Battelle Pacific Northwest Laboratories, Research Unit No. 454, April 1980.
45. Characterization of Organic Matter in Sediments from the Gulf of Alaska, Bering and Beaufort Seas, University of California Los Angeles, Research Unit No. 460, June 1981.
46. Activity-Directed Fractionation of Petroleum Samples, Battelle Pacific Northwest Laboratories, Research Unit No. 566, October 1979.
47. Taxonomic Composition, Seasonal Distribution, and Abundance of Ichthyoplankton in the Nearshore Zone of the Kodiak Archipelago, Alaska, Northwest and Alaska Fisheries Center/NOAA and the University of Washington, Research Unit No. 551, 1980.
48. Seasonal Composition and Food Web Relationships of Marine Organisms in the Nearshore Zone-Including Components of the Ichthyoplankton, Heroplankton, and Holoplankton, Northwest and Alaska Fisheries Center/NOAA, Research Unit No. 551, February 1980.
49. Distribution and Abundance of Decapod Larvae of the Kodiak Shelf, National Marine Fisheries Service/NOAA, Research Unit No. 551/553, July 1983.
50. Seasonal Composition and Abundance of Juvenile and Adult Marine Finfish and Crab Species in the Nearshore Zone of Kodiak Island's Eastside, Alaska Department of Fish and Game, Research Unit No. 556, April 1982.
51. A Survey for Spawning Forage Fish on the East Side of the Kodiak Archipelago, Alaska Department of Fish and Game, Research Unit No. 552, 1981.
52. Measurement and Location of Earthquakes in Western Alaska, The Gulf of Alaska, and the Bering Sea, University of Texas, Research Unit No. 579, June 1982.
53. Geotechnical Framework Study of the Kodiak Shelf, Alaska, U.S. Geological Service, Research Unit No. 569, June 1983.
54. Seismic Hazard Analyses of the Gulf of Alaska-Development of Software, Woodward-Clyde Consultants, Research Unit No. 590, May 1982.
55. Summer Distribution and Numbers of Fin, Humpback, and Gray Whales in the Gulf of Alaska, National Marine Fisheries Service/NOAA, Research Unit No. 595, March 1981.
56. Oil-Weathering Computer Program User's Manual: Multivariate Analysis of Petroleum Weathering in the Marine Environment-Sub Arctic, Science Application, Inc., Research Unit No. 597, January 1984.
57. Storm Petrel Oil Investigations, University of Washington, Research Unit No. 598, January 1984.
58. Habitat Requirement and Expected Distribution of Alaska Coral, VTN Oregon Inc., Research Unit No. 601, October 1981.
59. Biodegradation of Aromatic Compounds by High Latitude Phytoplankton, University of Texas, Research Unit No. 607, June 1982.
60. Seasonal Population Density Distribution of Copepods, Euphausiids, Amphipods and other Holoplankton of the Kodiak Shelf, VTN, Research Unit No. 608, March 1986.



## Shumagin Planning Area - Active and Planned Studies

The studies listed below are presently being conducted by MMS or are planned to be conducted on a schedule which will provide information for the EIS and/or subsequent decision documents related to OCS Lease Sale 86. Information on the status of these studies and the information they have produced may be obtained from the Alaska OCS Region, MMS, at the address listed under "Description of Area" above.

## Environmental Studies

1. Compilation of a Homogenous Earthquake Catalog for the Alaskan-Aleutian Range, University of Alaska, Research Unit No. 586, Ongoing study.
2. Bering Sea Fish - Oil Spill Interaction Model, Northwest and Alaska Fisheries Center/NOAA, Research Unit Number 643, Ongoing Study.
3. Effects of Oil-Contaminated Sediments on Egg Production and Fertilization in Tanner Crab (*Chionoecetes bairdii*), Northwest and Alaska Fisheries Center/Auk Bay, Research Unit Number 650, Ongoing Study.
4. The Gulf of Alaska Book, Donald Hood Oceanographic Consultants and OCSEAP, Research Unit 656, ongoing study.
5. Currents and Pollutant Transport in the Western Gulf of Alaska, Dobrocky Seatech, Research Unit Number 657, Ongoing Study.
6. Lethal and Sublethal Effects of Spilled Oil on Herring Reproduction, Northwest and Alaska Fisheries Center/NOAA, Research Unit Number 661, Ongoing Study.
7. Western Gulf of Alaska Oceanographic Processes: Alaska Peninsula kinds Investigations, Pacific Marine Environmental Laboratory/NOAA, Research Unit Number 666, Ongoing Study.
8. Coastal Morphology of the Southern Coastline of the Alaska Peninsula, Research Planning Institute Inc., Research Unit Number 671, Ongoing Study.
9. Relationship of Endangered Whales and Other Marine Mammals in Offshore Lease Offerings: Distribution, Abundance and Habitat Usage in the Northwestern Gulf of Alaska and Southeastern Bering Sea, Envirosphere, Research Unit Number 673, Ongoing Study.
10. Behavioral Responses of Feeding Gray Whales in the Coastal Waters of Alaska: Effects of Industrial Noise, Bolt, Beranek and Newman Inc., Research Unit Number 675, Ongoing Study.
11. Ocean Circulation and Oil Spill Trajectory Simulations, Applied Science Assoc., Research Unit Number 676, Ongoing Study.
12. Evaluation of Available Environmental Information for Select Potential Oil and Gas Leasing Areas - Unimak Pass, LEL Limited Environmental Research Assoc., Research Unit Number 677, Ongoing Study.

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61. The Nature and Biological Effects of Weathered Petroleum, National Marine Fisheries Service/NOAA, Research Unit No. 615, December 1985.

62. Effects of Oiled Sediment on Juvenile King Crabs, National Marine Fisheries Service/NOAA, Research Unit No. 620, October 1983.

63. Feasibility of Tracking Whales Using the Argus Satellite System, Oregon State University, MMS contract, November 1982.

64. Radio Tagging of Finback Whales-Iceland, June-July 1980, Woods Hole Oceanographic Institution, MMS contract, January 1981.

## Shumagin Planning Area - Completed Socioeconomic Studies

1. Northern and Western Gulf of Alaska, Commercial Fishing Industry Impacts, Alaska Sea Grant Program, Dept. of Agriculture Resource Economics, Frank Orth & Assoc., MMS Technical Report No. 36, February 1980.
2. Northern and Western Gulf of Alaska, Local Socioeconomic Baseline, Alaska Consultants, Inc., MMS Technical Report No. 32, May 1979.
3. Western Gulf of Alaska Petroleum Development Scenarios, Dames and Moore; MMS Technical Report No. 35, February 1979.
4. Western Gulf of Alaska Transportation Systems Analysis, Peter Eakland & Assoc., MMS Technical Report No. 37, January 1980.
5. Western Gulf of Alaska, Economic & Demographic Impacts, Institute of Social and Economic Research, University of Alaska, MMS Technical Report No. 38, August 1979.
6. Western Gulf of Alaska, Kodiak Non-Native Sociocultural Impacts Inc., Payne & Associates, MMS Technical Report No. 39, January 1980.
7. Western Gulf of Alaska Local Socioeconomic Impacts, Alaska Consultants, Inc., Technical Report No. 40, September 1979.
8. Western Gulf of Alaska, Kodiak Native Sociocultural Impacts, Cultural Dynamics, Inc., MMS Technical Report No. 41, October 1979.
9. Gulf of Alaska Economic and Demographic Systems Analysis, Institute of Social and Economic Research, University of Alaska, MMS Technical Report No. 98, March 1984.
10. Kodiak/Shumagin Socioeconomic Update, Cultural Dynamics, Ltd., Technical Report No. Unassigned, due September 1985.

These study reports can be viewed at the Alaska OCS regional office and most public libraries in Alaska. The socioeconomic studies may be ordered directly from the U.S. Department of Commerce, National Technical Information Service, by calling FTS 707-4650 or Commercial (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

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13. Effects of Petroleum - Contaminated Waterways on the Spawning Migration of Adult Pacific Salmon, Contract in Negotiation, Research Unit Number 66a, Ongoing Study.

14. Investigations of the Potential Effects of Underwater Noise from Petroleum Industry Activities on Migrating Gray Whale Behavior, Edt Beranek and Newman, MMS contract, November 1983 and ongoing study.

15. Development of Satellite-Linked Methods of Large Cetacean Tagging and Tracking Capabilities in OCS Lease Areas, Oregon State University, MMS contract, Ongoing study.

16. Summary of the Abundance and Distribution of Beluga Whales - 1986.

17. Simulation Modeling of the Effects of Oil Spills on the Population Dynamics of Key Marine Mammal Species - 1986.

18. Unimak Pass Migratory Study - 1986.

#### Socioeconomic Studies

1. Unimak Pass Vessel Analysis, Louis Berger and Associates, Inc., Technical Report No. 108, September 1984.

Inquiries about the status and availability of information about reports and studies should reference the research unit number or the technical report number, not the sequential number assigned in these lists.

#### NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

##### Purpose of Notice of Intent

Pursuant to the regulation implementing the procedural provision of the National Environmental Policy Act of 1969 (40 CFR 1501.7), the MMS is announcing its intent to prepare an EIS regarding the proposed oil and gas leasing proposal known as Sale 66 in the Shumagin region of Alaska. The notice of intent also serves to announce the initiation of the scoping process. The scoping process is intended to involve Federal, State, and local governments and other interested parties in aiding the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal which may be considered are to delay the sale, cancel the sale, or modify the sale.

##### Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered

to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Description of Area" above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Shumagin Lease Sale 66." Comments are due no later than February 1986. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining comments and information regarding the scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Approved:

*[Signature]*  
Deputy Assistant Secretary - Land and Minerals Management  
J. Steven Griles

OCT 31 1985

Date

*[Signature]*  
Director, Minerals Management Service  
Wm. D. Bettenberg







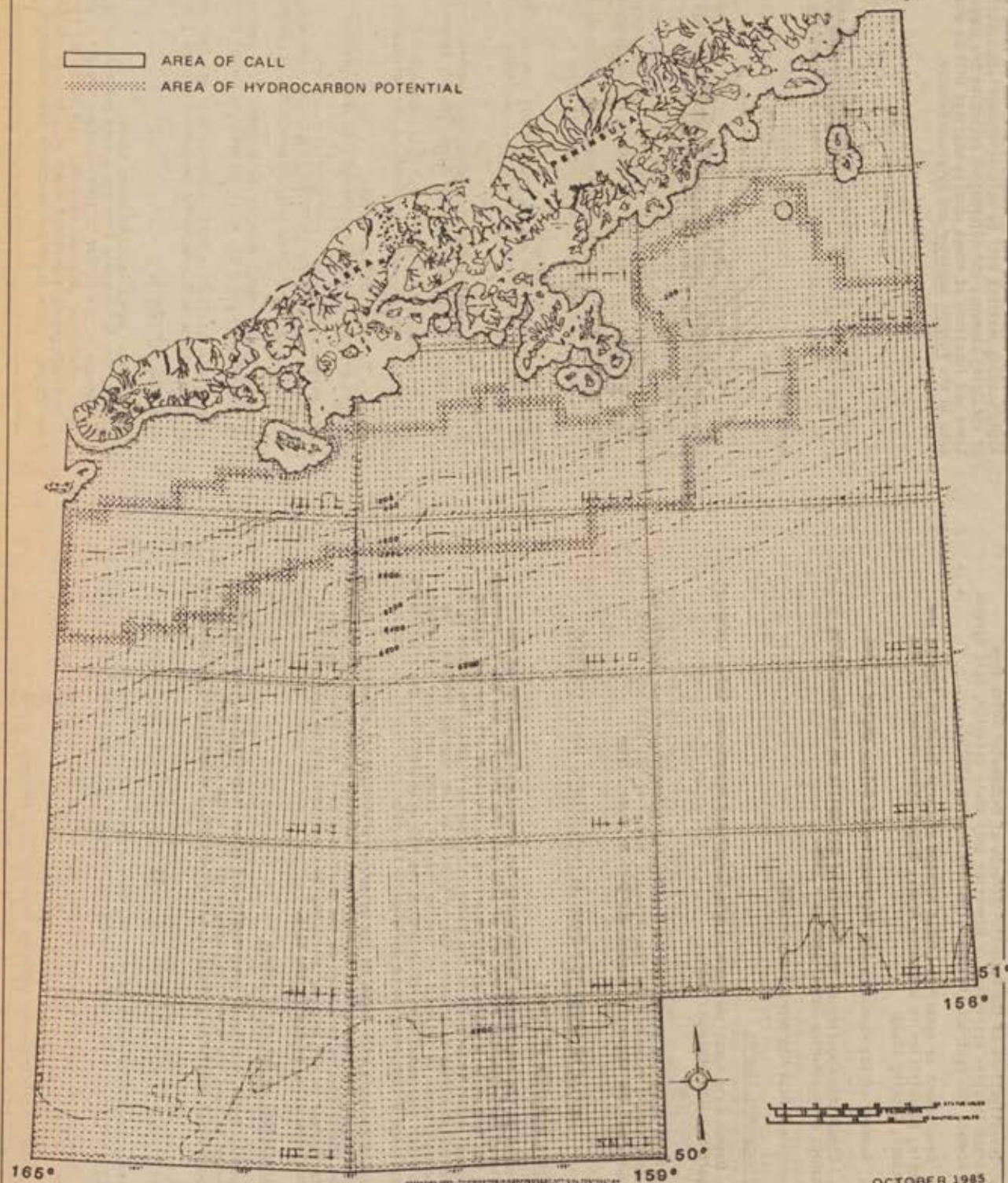
# SHUMAGIN

LEASE SALE 86 (DECEMBER 1987)

## CALL FOR INFORMATION AND NOMINATIONS



-  AREA OF CALL  
 AREA OF HYDROCARBON POTENTIAL



WATER DEPTH IN METERS

[FR Doc. 85-26461 Filed 11-5-85; 8:45 am]

BILLING CODE 4310-MR-C

OCTOBER 1985

ALASKA OCS REGION



# Registered

Wednesday  
November 6, 1985

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## Part V

### Federal Trade Commission

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16 CFR Part 453

Trade Regulation Rule: Funeral Industry  
Practices; Final Rules



## FEDERAL TRADE COMMISSION

## 16 CFR Part 453

## Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Request for Public Comment on Petition by State of Arizona for Statewide Exemption from Trade Regulation Rule Concerning Funeral Industry Practices.

**SUMMARY:** The Federal Trade Commission seeks public comment on the request by the State of Arizona for exemption from the trade regulation rule concerning funeral industry practices, 16 CFR Part 453. To facilitate public consideration and comment, the Commission has summarized the information in the Arizona petition. In addition, the Commission has outlined the exemption process it intends to follow. The Commission invites public comment on the petition generally and on certain questions specifically.

**DATE:** Public comments will be accepted until January 6, 1986.

**ADDRESS:** Comments should be captioned: "Arizona Petition for Statewide Exemption from the Funeral Rule", and should be submitted to the Office of the Secretary, Room 136, Federal Trade Commission, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Copies of the petition can be obtained from the Public Reference Room, Room 130, Federal Trade Commission, 6th & Pennsylvania Ave., NW., Washington, D.C. 20580. In addition, copies may be obtained in Arizona from the Arizona State Board of Funeral Directors and Embalmers, 1645 West Jefferson, Phoenix, Arizona 85007. Inquiries about this notice can be addressed to Lewis Rose, 202/376-2863, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, D.C. 20580.

## SUPPLEMENTARY INFORMATION:

## I. Introduction

On June 5, 1984, the Attorney General's Office of Arizona, on behalf of the Arizona State Board of Funeral Directors and Embalmers (the "Board"), filed a petition for statewide exemption (the "Petition") pursuant to § 453.9 of the Commission's trade regulation rule concerning funeral industry practices (the "Funeral Rule" or "Rule").<sup>1</sup> The

Petition was supplemented by filings dated February 1, 1985,<sup>2</sup> and March 29, 1985.<sup>3</sup>

Section 453.9 of the Funeral Rule states:

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) there is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) that state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination for as long as the state administers and enforces effectively the state requirement.

In the Statement of Basis and Purpose the Commission discussed the factors that it would consider in the evaluation of petitions for statewide exemption filed pursuant to Section 453.9 of the Rule. These factors include: (1) The existence of any private rights of action for an aggrieved consumer; (2) the scope and format of required disclosures to funeral consumers; and (3) the means available to the state to effectively administer and enforce its law.<sup>4</sup>

The effect of a grant of exemption by the Commission to a state is that the Funeral Rule will no longer be in effect in that state for so long as the state administers and enforces effectively its law.<sup>5</sup> The Commission has stated that it intends to determine the appropriate relationship between the Funeral Rule and state law on a case-by-case basis in the context of an exemption proceeding conducted pursuant to Section 1.16 of the Commission's Rules of Practice.<sup>6</sup>

To assist states, the Commission published staff exemption guidelines explaining the procedures that staff will follow in handling requests for statewide exemptions from the Commission's Funeral Rule and the procedures that staff will recommend that the Commission follow in granting or denying such exemptions.<sup>7</sup>

<sup>1</sup> This document contains a supplement to Arizona's Petition which reflects revisions made to its state laws and regulations. It is identified in FTC File No. 215-46 as Document No. XXIII-12.

<sup>2</sup> This document contains a statement from the Board asserting that its laws and regulations are reasonably equivalent to the requirements of the Funeral Rule. It is identified in FTC File No. 215-46 as Document No. XXIII-14.

<sup>3</sup> Statement of Basis and Purpose (hereinafter cited as "SBP"), 47 FR 42260, 42287 (Sept. 24, 1982).

<sup>4</sup> SBP at 42287.

<sup>5</sup> *Id.*

<sup>6</sup> 50 FR 12521 (Mar. 29, 1985). The guidelines specifically note that insofar as the guidelines discuss the procedures which staff intends to recommend, the Commission remains free to adopt different procedures.

The exemption guidelines state that additional procedures for public participation may be scheduled if necessary for a full and fair presentation of significant issues. For example, the guidelines state that oral hearings may be necessary if there are significant factual hearings which can be adequately presented only through an oral hearing, such as where cross-examination is necessary to fully and fairly present significant factual issues. In the Commission's opinion, a determination as to whether such procedures will be necessary cannot be made at this time. However, interested parties may request that the Commission schedule an oral hearing or a period for rebuttal comments.

The Commission invites written comments on the petition. To facilitate public comment, the petition has been summarized and the differences and similarities between the laws identified.

## II. The Arizona Petition

## A. Background

As noted above, the Arizona Petition was originally filed on June 5, 1984. However, on August 6, 1984, the Arizona Assistant Attorney General, acting as counsel to the Board, informed the Commission that the Arizona rules and regulations that are pertinent to the Petition were not in final form and were subject to modification by the Board in a meeting scheduled for September 18, 1984. The Commission's staff informed the Board that it would hold the Petition in abeyance until the Board officially adopted the proposed rules and regulations in final form.<sup>8</sup> On February 1, 1985, the Board filed a supplement to its Petition for exemption.<sup>9</sup> This supplement reflects certain revisions to state law made by the Board. By letter dated March 29, 1985, the Board requested that the Petition be considered on the basis of the material filed in its Petition and supplement.<sup>10</sup>

<sup>8</sup> This letter is listed in FTC File No. 215-46 as Document No. XXIV-7. This step was taken to ensure that the Commission's resources would not be expended to analyze a state law that had not been adopted in final form and was still subject to further modification. In the Commission's opinion, the Rule clearly requires the applicable state law to be in effect when an exemption is granted. While the rule does not specify that the state law must be in effect when an exemption proceeding is initiated, in the Commission's opinion an exemption proceeding should not be initiated if the state law is not in final form.

<sup>9</sup> See *supra* note 2.

<sup>10</sup> See *supra* note 3.

<sup>1</sup> The Arizona Petition has been placed on the public record and is identified as Document No. XXIII-1 in FTC File No. 215-46.



*B. Does the State Law Apply to the Transactions to Which the Funeral Rule Applies?*

The state funeral practices law was enacted by the state legislature in 1976 and amended by the legislature in 1980, and 1984.<sup>11</sup> In addition, the Arizona Board of Funeral Directors and Embalmers has prescribed rules and regulations and supplementing the state law requirements.<sup>12</sup> To facilitate the public's review of the Petition, this notice refers to the various Arizona laws, rules, and regulations as the "state law" and clarifies the source, when appropriate, by footnote.

*1. Is the Coverage of the State Law the Same as the Funeral Rule?*

The Commission's Rule applies when funeral providers:

1. sell or offer to sell funeral goods;
2. sell or offer to sell services to care for and prepare the deceased remains for final disposition; and
3. provide services to arrange, supervise or conduct the final disposition.

The state law underlying the Petition appears to apply to all sales of funeral goods or services (as defined under the Funeral Rule) by a licensed funeral home, funeral director, or other agents or employees of a funeral home.<sup>13</sup> Moreover, in Arizona it is unlawful to provide funeral arrangement services without appropriate state funeral directing and embalming licenses.<sup>14</sup> It appears, therefore, that Arizona state law is broader in scope and coverage than the Commission's Rule because it does not require the sale of both goods and services.

The Commission requests public comment on whether the distinction between the Funeral Rule's coverage and the state law's coverage has any practical application to the issue of whether the state law applies to the same transactions as the Funeral Rule.

*2. Definitional Issues*

*(a) Identical Provisions in Both Laws.* The following definitions are identical in both the Funeral Rule and the state law: "cash advance item,"<sup>15</sup> "direct

cremation,"<sup>16</sup> "immediate burial,"<sup>17</sup> and "unfinished wood box."<sup>18</sup>

*(b) Undefined Terms in State Law.* The following terms are undefined in state law but have been defined in Section 453.1 of the Funeral Rule: "alternative container," "casket," "cremation," "crematory," "funeral goods," "funeral services," "funeral provider," "outer burial container," "person," and "services of funeral director and staff."

In addition to identifying the category of goods and services covered by the Rule, some of the definitions provide substantive protection. For example, the Commission's definition for "services of funeral director and staff" clarifies that funeral providers may not include the cost of goods and services that are specifically required to be separately itemized (such as embalming) in this *nondeclinable* item. This definition protects the consumer's right to decline unwanted items by preventing an improper "bundling" of declinable items into the non-declinable fee for professional services.<sup>19</sup> In addition, the Commission, by defining alternative container specifically, clarified the consumer's right to use a non-metal and non-wood container as a substitute for a traditional casket when purchasing a direct cremation.

Although the state law does not define these terms, it contains a provision stating that the draft compliance guidelines issued by the Commission's staff prior to July 1, 1984, shall be used to interpret the Arizona rules that are equivalent to the Funeral Rule to the extent applicable and to the extent they do not conflict with state law or the Board's Rules.<sup>20</sup> Public comment is sought regarding whether state law's incorporation of the compliance guidelines is sufficient to provide definitions for these terms and ensure that the coverage and protection afforded by the Commission's Rule definitions are the same under state law.

*C. Does the State Law Provide a Level of Protection as Great as or Greater Than the Level of Protection Provided by the Funeral Rule?*

In this section, the state law is compared to the Funeral Rule on a provision by provision basis, and where appropriate, similarities and distinctions between the Funeral Rule and the state law are noted.

*1. Provisions in State Law that Address the Same Practices Addressed in the Commission's Rule.*

*(a) Telephone Price Disclosures.* Section 453.2(b)(1)(i) of the Funeral Rule requires funeral providers to tell persons who telephone the funeral provider's place of business and ask about the terms, conditions or prices at which funeral goods and services are offered that price information is available over the phone. The state law contains a provision identical to this provision.<sup>21</sup>

Section 453.2(b)(1)(ii) of the Funeral Rule requires, in addition, that funeral providers tell persons who ask by telephone about the *offerings or prices* any accurate information from the written price lists and any other information which reasonably answers the question and which is readily available. State law limits this additional requirement to only provide information from the *price* list and any other information which reasonably answers a question about the *retail prices* of funeral goods or services readily available for sale to the caller.<sup>22</sup> Thus, unlike the Funeral Rule, the state law does not require funeral providers to answer callers' questions about their offerings and only requires information about prices to be disclosed over the telephone. In staff's compliance guidelines for the Funeral Rule, the Commission's staff expressed its opinion that § 453.2(b)(1)(ii) of the Rule requires funeral providers to answer questions, for example, about religious funerals.<sup>23</sup> It does not appear that such inquiries have to be answered under state law. Public comment is sought on the degree to which this distinction affects the level of protection afforded by state law.

On the other hand, the State law contains a provision requiring funeral establishments to mail its written price lists to callers upon request, subject to certain postage and handling fees.<sup>24</sup> The Funeral Rule does not contain a similar provision. Public comment is sought on how this provision affects the level of protection afforded by state law.

*(b) Written Price Disclosures Prior to Selection of Arrangements.* State law

<sup>21</sup> Rule 304(A).

<sup>22</sup> *Id.*

<sup>23</sup> 50 FR 28060, 28064 (July 9, 1985). The guidelines are intended to provide assistance to industry members about areas in which the Commission's staff believed that guidance would be helpful. The views expressed in the guidelines are those of the staff only and are not binding on the Commission.

<sup>24</sup> Rule 304(B). Under this provision, funeral providers may require the consumer to pay a fee, not to exceed \$2.00, before the funeral provider is required to mail a copy of the general price list.

<sup>11</sup> Arizona Revised Statutes, Title 32, Chapter 12. The amended statute is included in Exhibit C of the Petition. It will be referred to as "A.R.S." in this notice.

<sup>12</sup> These rules are found in Exhibits D, and M of the Petition. They will be referred to as "Rule —" in this notice. In addition, Exhibit H of the Petition contains proposed regulations that were considered by the Board but not adopted.

<sup>13</sup> Rules 302(A) and 303(A).

<sup>14</sup> A.R.S. sections 32-1361, 32-1362, 32-1367, and 32-1368(A)(6).

<sup>15</sup> Compare 16 CFR 453.2(c) with Rule 101.2.

<sup>16</sup> Compare 16 CFR 453.1(h) with Rule 101.4.

<sup>17</sup> Compare 16 CFR 453.1(i) with Rule 101.7.

<sup>18</sup> Compare 16 CFR 453.1(p) with Rule 101.10.

<sup>19</sup> See SBP at 42285.

<sup>20</sup> Rule 310.



contains a provision requiring each funeral director, funeral establishment, or embalmer to provide a casket price list, outside receptacle price list, and a general price list in the form and manner required by Sections 453.2(b) (2), (3), and (4) of the Funeral Rule.<sup>25</sup> In addition, state law expressly incorporates all of Section 453.2(b) by reference.<sup>26</sup> Finally, state law requires that the items that must be itemized under the Funeral Rule must be included on the general price list above any additional items.<sup>27</sup>

However several of the affirmative disclosures required to be included in these lists by various provisions of Section 453.3 of the Funeral Rule do not appear to be required by state law. Specifically, the following affirmative disclosures required by the Funeral Rule do not appear to be required by state law:

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.<sup>28</sup>

If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas.<sup>29</sup>

In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.<sup>30</sup>

The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. [However, any funeral arrangements you select will include a charge for our services].<sup>31</sup> If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.<sup>32</sup>

Public comment is sought regarding the degree to which the omission of these disclosures affects the level of protection provided by state law.

(c) *Price Disclosures at the Conclusion of the Discussion of Funeral Arrangements.* With the exception of the two distinctions discussed below, the state law provisions requiring funeral establishments, funeral directors, or embalmers to give an itemized statement of the goods and services selected at the conclusion of the discussion of funeral arrangements are identical to the requirements of the Funeral Rule.<sup>33</sup>

The first distinction concerns the companion provisions to the disclosures required by § 453.4(b)(2)(i)(A) of the Rule that inform consumers that they have the right to select only the goods and services they desire, except for those required by law or in other specified circumstances.<sup>34</sup> Section 453.3(d)(2) of the Funeral Rule requires any legal, cemetery, or crematory requirement that the funeral provider represents to persons as compelling any purchase to be identified and briefly described in writing on the statement of goods and services selected. However, although state law requires any such requirement to be disclosed in writing, it does not specify the location where the disclosure must be made.<sup>35</sup> In addition, the state law does not contain a provision requiring the following disclosure on the written memorandum:

Charges are only for those items to be used. If we are required by law to use any items, we will explain the reasons in writing.

Such a disclosure is required by § 453.4(b)(2)(i)(B) of the Funeral Rule. However, this disclosure does appear on the model form for the statement of funeral goods and services selected that the Board appended to its Rules.<sup>36</sup>

The second distinction is that state law requires funeral providers to include a disclosure on the statement of funeral goods and services selected notifying consumers that except under certain health circumstances, state law does not require the purchase or use of caskets or containers.<sup>37</sup> There is no similar provision in the Funeral Rule.

Public comment is sought on the degree to which these distinctions affect the level of protection afforded by this provision of state law.

(d) *Misrepresentations.* This section of the notice discusses the provisions in

state law that prohibit certain representations. One factor should be considered in evaluating the relative levels of protection afforded by state law and the Funeral Rule. The format of the state law differs from the format of the provisions of the Funeral Rule. The Funeral Rule was drafted specifically to define unfair or deceptive acts or practices and also to describe the preventive requirements necessary to address those acts or practices. The state law, on the other hand, generally only reflects the preventive requirements provisions of the Funeral Rule. That is, state law prohibits many practices prohibited under the Funeral Rule, but unlike the Funeral Rule does not require in many instances a disclosure to consumers regarding the practices to remedy the effect of past practices. In other instances the state law does not define the unfair or deceptive act or practice, but only describes the necessary preventive requirements. Public comment is sought on how the difference in approach affects the level of protection provided by state law.

(i) *Embalming Provisions.* Section 453.3(a)(1) prohibits funeral providers from representing that state or local law requires that a deceased person be embalmed when such is not the case and from failing to disclose that embalming is not required by law except in certain special cases. State law contains identical prohibitions except that the state law requirements for embalming are also included among the rule provisions.<sup>38</sup> Thus, in the Commission's view, these provisions of state law do not raise any material issues regarding the level of protection provided by state law.

The state law, however, does not contain a written disclosure regarding embalming. Further, unlike the Rule the state does not appear to prohibit representations that embalming is required under any of the following circumstances: (1) When a consumer wishes to have a direct cremation; (2) when a consumer wishes to have an immediate burial; (3) when the remains are to be placed in a sealed casket; or (4) if refrigeration is available and the funeral is without viewing or visitation and there is to be a closed casket. Such representations are specifically prohibited by § 453.3(a)(2)(i) of the Funeral Rule. Public comment is sought on how these omissions affect the level of protection afforded by state law.

(ii) *Caskets for Cremations Provisions.* Section 453.3(b)(1) of the Funeral Rule

<sup>25</sup> Rule 305(A).

<sup>26</sup> Rule 304(B).

<sup>27</sup> Rule 304(A).

<sup>28</sup> 16 CFR § 453.3(a)(2)(ii).

<sup>29</sup> 16 CFR 453.3(b)(2).

<sup>30</sup> 16 CFR 453.3(c)(2).

<sup>31</sup> This sentence is to be included only if the funeral provider elects to make the fee for the services of funeral director and staff nondeclinable, as permitted by 16 CFR 453.4(b)(2)(i)(A).

<sup>32</sup> 16 CFR 453.4(b)(2)(i)(A).

<sup>33</sup> Compare 16 CFR 453.2(b)(5) with Rule 307.

<sup>34</sup> See text accompanying note 32.

<sup>35</sup> Rule 307(c).

<sup>36</sup> See Appendices B and C to Exhibit M of the Petition.

<sup>37</sup> *Id.*

<sup>38</sup> Rule 303(A)(1).



prohibits representations that state or local law requires a casket for direct cremations or that a casket (other than an unfinished wood box) is required for direct cremations. State law contains an identical provision.<sup>39</sup> However, the Commission requests public comment on to what extent the omission of a disclosure provision in state law similar to that contained in § 453.3(b)(2) of the Funeral Rule affects the level of protection afforded by state law.

(iii) Provisions Regarding Preservative and Protective Value Claims. Section 453.3(e)(1) of the Funeral Rule prohibits representations that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time. The state law has a similar provision.

Section 453.3(e)(2) of the Funeral Rule prohibits representations that funeral goods have protective features or will protect the body from gravesite substances when such is not the case. State law contains a similar provision except that it limits the protective claims to water tightness or airtightness.<sup>40</sup> Public comment is sought on the extent to which this distinction affects the level of protection afforded by this provision of state law.

(iv) Cash Advance Provisions. Section 453.3(f) of the Funeral Rule prohibits representations that the price charged for a cash advance item is the same as the cost to the funeral provider for that item when such is not the case, and requires funeral providers to disclose the existence of a service fee if a charge is made upon, or a rebate, commission or trade or volume discount is retained by a funeral provider. State law contains a similar provision.<sup>41</sup> In addition, state law prohibits funeral providers from billing for cash advance items unless the net amount paid for such items by the funeral establishment is the same amount billed to the consumer.<sup>42</sup> This state law provision prohibiting mark-ups appears to obviate the need for a provision requiring written disclosure of the existence of a mark-up on the general price list.

(e) *Required Purchases*—(i) *Casket for Cremation Provisions*. Section 453.4(a) of the Rule prohibits funeral providers from requiring consumers to purchase a casket, other than an unfinished wood box, for direct cremation. Funeral providers who arrange direct cremations must make an unfinished wood box or alternative container available for these arrangements.

State law does not appear to prohibit funeral providers from requiring consumers to purchase caskets for direct cremation. In addition, there does not appear to be a provision in state law that requires funeral directors who arrange direct cremations to make an unfinished wood box or alternative container available. Rather, state law requires funeral directors and establishments to display all in-stock inexpensive caskets and containers that are regularly offered for sale and prohibits displaying these items under less favorable conditions than other caskets or containers.<sup>43</sup> State law does not, however, require the funeral home to sell unfinished wood boxes, alternative containers, or even inexpensive caskets. Rather, under state law, "inexpensive caskets" are defined to be the three least expensive adult caskets held for sale by that establishment.<sup>44</sup> In issuing this provision of the Funeral Rule, the Commission noted that while casket prices vary substantially, even the least expensive casket typically carried by a funeral home generally costs substantially more than a non-casket alternative.<sup>45</sup> In light of this, public comment is sought regarding the level of protection afforded by this provision of state law.

(ii) *Other Required Purchases*. Section 453.4(b) of the Funeral Rule prohibits a funeral provider from requiring consumers to buy any unwanted goods or services in order to buy other requested goods or services. In the Statement of Basis and Purpose, the Commission noted that:

"[b]y bundling all of the preselected goods and services together, the funeral provider is effectively forcing the consumer to buy items he or she doesn't want as a condition of providing a necessity that only he can provide: Disposition of the body . . . The evidence suggests that a significant number of consumers . . . are thereby required to pay for items they do not want or use."<sup>46</sup>

No analogous provision prohibiting such tying arrangements is contained in state law. The Commission solicits comments on the degree to which the absence of such a provision affects the level of protection provided by state law.

<sup>39</sup> Rule 302(A)(2). In addition, the Board cites two other provisions regarding merchandise and service selection techniques that the Board believes are similar to § 453.4(a) of the Funeral Rule. However, these two provisions of state law address different practices than § 453.4(a)(1) of the Funeral Rule which prohibits the required purchase of a casket for direct cremation. These two state law provisions, therefore, are discussed in Part II(C)(2) of this notice.

<sup>40</sup> Rule 101.B.

<sup>41</sup> See SBP at 42280.

<sup>42</sup> SBP at 42281.

(f) *Service Provided Without Approval*. Section 453.5 of the Funeral Rule prohibits funeral providers from charging a fee for unauthorized embalming unless required by law. The Funeral Rule also requires a written disclosure informing consumers of this provision on the forms given to them. State law contains an identical provision.<sup>47</sup>

## 2. Provisions of Arizona Law Not Included in the Funeral Rule

The state law also requires funeral establishments to: (1) Display their three least expensive caskets in the same general manner as their other caskets are displayed;<sup>48</sup> (2) promptly release human remains upon request of a family member or other authorized person;<sup>49</sup> (3) not make disparaging statements concerning merchandise without basis in fact;<sup>50</sup> and (4) not represent or insinuate that a consumer's concern for price, as reflected in the selection of inexpensive arrangements, reflects a lack of concern for the deceased or family, neighbors, or friends.<sup>51</sup>

In addition, state law requires each funeral establishment to place a price card on each casket, container and outside receptacle offered for sale.<sup>52</sup> Each card must be displayed in a conspicuous manner and must disclose the itemized retail price of the merchandise. Price cards for caskets or outside receptacles must also contain certain descriptive information specified by state law.

Another feature in state law that is not addressed by the Funeral Rule is the requirement that each funeral establishment provide a copy of the consumer information pamphlet prepared by the Board.<sup>53</sup>

Finally, the state law requires funeral establishments to retain the price lists and memoranda for three years, rather than the one year requirement imposed by the Funeral Rule.<sup>54</sup>

The Commission seeks public comment on how any or all of the protections in the state law that are not addressed by the Funeral Rule affect the level of protection provided by the state law.

<sup>47</sup> Rule 302(A)(3).

<sup>48</sup> Rule 302(A)(2). See SBP at 42290 n. 317.

<sup>49</sup> Rule 302(A)(4). See SBP at 42289-90.

<sup>50</sup> Rule 302(A)(9). See SBP at 42290 n. 319.

<sup>51</sup> Rule 306.

<sup>52</sup> Rule 306.

<sup>53</sup> Rule 306. A draft of this brochure is contained in Exhibit K in the Arizona petition.

<sup>54</sup> Rule 309.

<sup>39</sup> Rule 303(A)(3).

<sup>40</sup> Rule 302(A)(5).

<sup>41</sup> Rule 303(A)(8).

<sup>42</sup> A.R.S. Section 32-1373(c).



#### D. Does the State Administer and Enforce Its Laws Effectively?

The final element of § 453.9 of the Funeral Rule concerns the State's willingness and ability to enforce its laws. Staff's exemption guidelines ask States to submit sufficient information to show a willingness and ability to enforce their laws effectively. In this section of the notice, the information regarding enforcement submitted by the Arizona Board in the Petition will be summarized.

There are 484 individuals who are licensed and subject to the State law. Of these, 384 are licensed funeral directors and embalmers while 74 have only embalmers' licenses. In addition, there are approximately 110 establishments licensed by the Board.

#### 1. Staffing

The Board is comprised of seven persons, of whom not more than three may be funeral directors or embalmers. The Board is supported administratively by an Executive Director and clerical staff. Since 1977, the Board has used the investigative services of the Arizona Attorney General's Office. According to the Petition, an experienced investigator from that office has been on permanent assignment to the Board to investigate consumer complaints and to conduct random compliance inspections of funeral establishments. The Board also receives legal services from the Attorney General. Finally, when necessary, the Board is empowered to employ hearing officers, citizen advisory committees and professional and clerical assistance as may be required.

#### 2. Funding

The Board has been appropriated the

following budget for the past three years:

#### Fiscal Year and Amount

1982-83	\$40,400
1983-84	\$46,800
1984-85	\$77,100

In the Petition, the Board states that it received a 67% increase in funds during the most recent legislative session in order to enable it to administer and enforce the funeral laws and regulations. According to the Petition, the Board will likely request more than \$100,000 to support its activities during the 1985-86 fiscal year.

The Board notes that while its budget is small relative to the federal appropriation for the FTC, the following factors must be considered: (1) The Board members are not paid and are only reimbursed for expenses; (2) all legal services and investigations are provided by the Attorney General and are funded through that agency's budget; (3) the Board regulates only approximately 110 funeral homes; and (4) it claims to allocate its modest fiscal resources efficiently.

#### 3. Sanctions

Under State law, the Board is empowered to revoke and/or suspend licenses and also impose an administrative penalty as sanctions in any disciplinary action.<sup>55</sup> Specifically, the Board may suspend licenses for up to 90 days for first violations and up to 180 days for a second violation. The funeral establishment's license may be revoked for three or more offenses or for any single offense which results in substantial economic or other injury.

In addition, the Board may impose an administrative penalty in a disciplinary action for each offense in accordance with the following schedule:

Violation	Penalty—individual licensee	Funeral establishment
1. Violation resulting in substantial injury or public harm	\$1,000 to \$2,500	\$2,500 to \$5,000
2. Violation involving dishonest, deceptive or misleading conduct	\$500 to \$2,500	\$1,000 to \$5,000
3. Violation involving potential threat to public health, safety or welfare	\$500 to \$2,500	\$1,000 to \$5,000
4. Violation involving failure to provide required disclosure	\$250 to \$1,000	\$500 to \$2,500
Other violations	\$250 to \$1,000	\$500 to \$2,500

Remedies under the State law should be compared with remedies under the Funeral Rule. Under section 5(m)(1)(A) of the Federal Trade Commission Act, the Commission may seek civil penalties in a United States District Court against any funeral provider found in violation of the Funeral Rule. The penalty assessed may be up to ten thousand dollars for each violation. Moreover, the Commission, pursuant to section 13(b) of the Federal Trade Commission Act, may

seek preliminary or permanent injunctions in a United States District Court for violations of the Funeral Rule.

#### 4. Private Rights of Action

In addition to the State laws administered by the Board, the Arizona Consumer Frauds Act has been interpreted by State courts to authorize individual consumers to bring private

lawsuits for deceptive practices concerning the sale of funeral goods or services.<sup>56</sup>

#### 5. Enforcement Procedures

State law requires the Board to investigate violations in accordance with procedures established by the Board.<sup>57</sup> Moreover, State law does authorize disciplinary proceedings.<sup>58</sup> All complaints, investigative reports, documents, exhibits, and other materials relating to an investigation remain confidential until the matter is closed, a hearing notice is issued, or until the matter is settled by a consent order. The licensee subject to the complaint will be notified of the name of the complainant within 30 days after the initiation of an investigation. The name of the complainant and general nature of the complaint may be released to the public by the Board after notification to the licensee.

In addition, State law allows the Board to appoint a citizen advisory committee concerning enforcement matters.<sup>59</sup> The committee is to be comprised of four funeral directors, four lay members, and one representative of State or local government. Its function is to review and evaluate investigative files referred to it by the Board, hold voluntary informal interviews, and make advisory recommendations to the Board. The Board, in its sole discretion, may accept, reject, or modify the committee's advisory recommendations. No mention of the committee's composition or activities is made in the Petition. Several news articles appended to the Petition discuss litigation brought by the Arizona Funeral Directors Association in opposition to the original promulgation of this provision of State law.<sup>60</sup>

#### 6. History of Enforcement

During the five year period ending April 30, 1984, the Board conducted 115 investigations in response to information received about violations of State law. During the same period, the Board also completed 94 compliance inspections, usually conducted at random, to determine whether funeral homes were following Arizona price disclosure requirements. The compliance inspection also included consumer surveys to determine the level of consumer satisfaction.

<sup>55</sup> *Sellinger v. Freeway Mobile Home Sales*, 110 Ariz. 573.

<sup>57</sup> Rule 121.

<sup>58</sup> Rule 122.

<sup>59</sup> Rule 109.

<sup>60</sup> See articles appended to end of original Petition.

<sup>56</sup> Rule 124.



As a result of these activities, during that period the Board initiated eleven enforcement actions resulting in the imposition of \$8,400 in civil penalties and \$8,267 in restitution payments to consumers. The average civil penalty was \$1,400 and the highest civil penalty imposed was \$2,500. The average consumer restitution payment was approximately \$700 and the highest individual payment was \$2,500. Eight of the Board's enforcement actions occurred during the two year period ending April 30, 1984, resulting in an aggregate of \$10,863 in civil penalties and consumer payments and one revocation action. According to the Petition, the majority of the Board's enforcement actions concerned deceptive practices, embalming without permission, or failure to provide price disclosures. However, the Petition does not contain a detailed breakdown of this information.

The Board also offers its opinion that the adoption of price disclosure and deceptive practices rules in June, 1981 has resulted in a higher level of compliance with State laws. The Board attributes this to the communication of definitive standards, the perception that the State laws would be vigorously enforced, and greater consumer awareness of State funeral laws.

Finally, the Board points to following level of consumer complaints as evidence of improving compliance levels:

#### *Fiscal Year and Number of Complaints*

1979-80-48
1980-81-37
1981-82-undisclosed
1982-83-30
1983-84-20

The Commission seeks public comment on whether the Petition demonstrates that Arizona has demonstrated that it has enforced and administered its State law effectively.

#### List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Emily H. Rock,  
Secretary.

[FR Doc. 85-26402 Filed 11-5-85; 8:45 am]  
BILLING CODE 6750-01-M

#### 16 CFR Part 453

#### Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

**ACTION:** Request for public comment on petition by State of Texas for Statewide exemption from Trade Regulation Rule.

**SUMMARY:** The Federal Trade Commission seeks public comment on the request by the State of Texas for exemption from the trade regulation rule concerning funeral industry practices, 16 CFR Part 453. To facilitate public consideration and comment, the Commission has summarized the information in the Texas petition. In addition, the Commission has outlined the exemption process it intends to follow. Moreover, the Commission invites public comment on the petition generally and on certain questions specifically.

**DATE:** Public comment will be accepted until January 6, 1986.

**ADDRESS:** Comments should be captioned: "Texas Petition for Statewide Exemption from the Funeral Rule," FTC File No. 215-46, and should be submitted to the Office of the Secretary, Room 136, Federal Trade Commission, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Copies of the petition can be obtained from the Public Reference Room, Room 130, Federal Trade Commission, 6th & Pennsylvania Ave., NW., Washington, DC 20580, (202) 523-3598. Inquiries about this notice can be addressed to: Raouf M. Abdullah, 202/376-2891 or Lewis Rose, 202/376-2863; Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On February 21, 1984, the Texas State Board of Morticians<sup>1</sup> (hereinafter "the Board") filed a petition for Statewide exemption pursuant to § 453.9 of the Funeral Rule.<sup>2</sup> The Board supplemented the petition by filings dated July 11, 1984,<sup>3</sup> August 22, 1984,<sup>4</sup> October 5,

<sup>1</sup> The petition was filed by the Texas State Board of Morticians which, according to the Texas attorney general, is the State agency charged with primary regulation of the funeral industry.

<sup>2</sup> The Texas petition has been placed on the public record and is identified as Document XXIII-2 in FTC File No. 215-46.

<sup>3</sup> This document contains proposed rules recommended to the Board by its legal counsel. It is identified in FTC File No. 215-46 as Document No. XXIII-3.

<sup>4</sup> This document contains a statement from the attorney general's office concerning the powers of the Board to regulate the funeral industry in Texas. It is identified in FTC File No. 215-46 as Document No. XXIII-4.

1984,<sup>5</sup> December 14, 1984,<sup>6</sup> December 21, 1984,<sup>7</sup> and February 28, 1985.<sup>8</sup>

Section 453.9 of the Funeral Rule states:

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination for as long as the state administers and enforces effectively the state requirement.

The purpose of § 453.9 of the Funeral Rule is to encourage federal-state cooperation by permitting appropriate state agencies to enforce their own state laws that are equal to or more stringent than the Funeral Rule.<sup>9</sup> In addition, section 19(a) of the FTC Improvements Act of 1980 required the Commission to include an exemption procedure in the Funeral Rule.<sup>10</sup>

In the Statement of Basis and Purpose, the Commission stated that among the factors that will be considered in the evaluation of petitions for statewide exemption filed pursuant to § 453.9 of the Rule are: (1) The existence of any private rights of actions for an aggrieved consumer; (2) the scope and format of required disclosures to funeral consumers; and (3) the means available to the state to effectively administer and enforce its law.<sup>11</sup>

The effect of a grant of exemption by the Commission to a state is that the Funeral Rule will no longer be in effect in that state so long as the state administers and enforces effectively its law.<sup>12</sup> The Commission has stated it

<sup>5</sup> This document contains recently adopted rules promulgated by the Board. It is identified in FTC File No. 215-46 as Document XXIII-5.

<sup>6</sup> This document contains a summary of recent enforcement activity by the Board. It is identified in FTC File No. 215-46 as Document XXIII-6.

<sup>7</sup> This document contains a summary of recent enforcement activity by the Board. It is identified in FTC File No. 215-46 as Document XXIII-7.

<sup>8</sup> This document contains a letter from the Board's executive director in which he explains how and when the Board recently amended its rules and regulations. In addition, it contains copies of the Texas Register in which the above mentioned amendments were published. The above document is identified in FTC File No. 215-46 as Document XXIII-13.

<sup>9</sup> Statement of Basis and Purpose (hereinafter cited as "SBP"), 47 FR 42260, 42287 (Sept. 24, 1982).

<sup>10</sup> Pub. L. No. 96-252 19(d), 15 U.S.C. 57(a) note 13.

<sup>11</sup> *Supra* note 9.

<sup>12</sup> SBP at 42287.



intends to determine the appropriate relationship between the Funeral Rule and the state law on a case-by-case basis in the context of an exemption proceeding conducted pursuant to § 1.16 of the Commission's Rules of Practice.<sup>13</sup>

Because Section 1.16 of the Commission's *Rules of Practice* does not apply solely to petitions for statewide exemption from trade regulation rules, the Bureau of Consumer Protection published exemption guidelines to assist states desiring to petition for an exemption.<sup>14</sup> Although these staff guidelines were not formally approved or adopted by the Commission, they represent the views of the Bureau of Consumer Protection.<sup>15</sup> The staff exemption guidelines explain the procedures that staff will follow in handling requests for statewide exemptions from the Commission's Funeral Rule and explain procedures that staff will recommend that the Commission follow in granting or denying such exemptions.

Specifically, the guidelines explain: (1) What materials states should submit as part of a complete exemption application; (2) what procedures are required by current Commission rules for considering exemption applications; and (3) what specific procedures staff will recommend that the Commission use in granting, denying and revoking exemptions under the Funeral Rule.

The exemption guidelines also state that additional procedures for public participation may be scheduled if necessary for a full and fair presentation of significant factual issues, such as where cross-examination is necessary.<sup>16</sup> A determination as to whether such procedures will be necessary has not been made at this time. The guidelines list information that should be contained in any such request. Any request should be sent to the Office of the Secretary.

In staff's state exemption guidelines, staff suggested a complete application be comprised of the following information: (1) A copy of all relevant state statutes, rules, regulations and court cases; (2) a statement comparing the state law with the Funeral Rule, on a provision by provision basis, which explains how the state law applies to the same transactions as the Funeral Rule and how the state law affords an overall level of protection to consumers that is equal to or greater than the

protection afforded by the Funeral Rule; (3) sufficient information to demonstrate the state's willingness and ability to effectively administer and enforce its law; and (4) a statement from the state's attorney general that the state law provides adequate authority to support the rules, regulations, conclusions, interpretations, policies and procedures described in the statement submitted in the application for the statewide exemption from the Funeral Rule.<sup>17</sup>

The staff exemption guidelines state that once a complete application for statewide exemption has been received, staff will recommend that the material be placed on the public record, publish a notice in the *Federal Register* and allow a period of time for interested persons to submit written comments.

To facilitate public comment on the facts and issues presented in the petition, the differences and similarities between the FTC Rule and State Law have been summarized below.

## II. The Texas Petition

### A. Background

As noted above, the Texas petition was originally filed on February 21, 1984. The submitted material indicated that the statement from the attorney general represented that the Texas State Board of Morticians is the primary agency responsible for enforcement of the state laws, rules and regulations for the funeral industry and, therefore, is the appropriate state agency to request an exemption.<sup>18</sup> On April 9, 1984, staff wrote to the Board and requested information from the attorney general regarding the support in the state law for the Board's rules, regulations, conclusions, interpretations, policies and procedures as described in the petition.<sup>19</sup>

On July 11, 1984, the Board notified staff by letter that the assistant attorney general who serves as the Board's legal counsel had reviewed the petition and had recommended that the Board amend its rules and regulations. In addition, the Board included a copy of the rules and regulations that its legal counsel had recommended the Board adopt.<sup>20</sup>

On August 22, 1984, the Board responded to staff's request of April 9, 1984, for a statement from the attorney general.<sup>21</sup> In that letter, the Board

requested staff to consider its application complete. However, staff informed the Board, by letter dated September 19, 1984, that because the proposed amendments to the state's funeral rules and regulations had not been officially adopted, staff would hold the petition in abeyance until the Board officially adopted the proposed amendments to its rules and regulations.<sup>22</sup>

On October 10, 1984, staff received copies of the newly adopted portions of the Board's rules and regulations.<sup>23</sup> However, as explained in more detail in Part II, C. 6 of this notice, staff then requested additional information from the Board concerning recent allegations about enforcement of the state law. On November 1, 1984, staff was notified that this information was not available. Staff requested, as an alternative, that the Board provide a summary of the cases the Board had investigated in the year since the petition was initially filed.<sup>24</sup> The executive director of the Board agreed to provide the information. This information was received on December 26, 1984.<sup>25</sup> The final submission, official copies of the newly amended rules and regulations, was received by staff on March 4, 1985.<sup>26</sup>

The remainder of this notice summarizes and analyzes the Texas petition with respect to the Commission's criteria for statewide exemption from trade regulation rules.

### B. Does the State Law Apply to Transactions to Which the Funeral Rule Applies?

The state law regulating funeral practices was enacted by the state legislature and is known as the State Mortuary Laws.<sup>27</sup> In addition, pursuant

<sup>22</sup> This letter is listed in FTC File No. 215-46 as Document No. XXIV-15. This step was taken to ensure that the Commission's resources would not be expended to analyze a state law that had not been adopted and was still subject to further modification. The Rule clearly requires the applicable state law to be in effect when an exemption is granted. Although the Rule does not specify that the state law must be in effect when an exemption proceeding is initiated, an exemption proceeding should not be initiated if the state law is not in final form or is subject to further modification.

<sup>23</sup> *Supra* note 5.

<sup>24</sup> These cases are relevant to the Board's administration and enforcement of the state law because the greater part of the mortuary laws upon which the petition is based took effect September 1, 1983, October 5, 1984, or February 7, 1985—after the initial petition was submitted.

<sup>25</sup> *Supra* note 7.

<sup>26</sup> *Supra* note 8.

<sup>27</sup> Tex. Rev. Civ. Stat. art. 4582b.

<sup>13</sup> *Id.*

<sup>14</sup> 50 FR 12521 (Mar. 29, 1985).

<sup>15</sup> The guidelines specifically state that insofar as the guidelines discuss the procedures which staff intends to recommend, the Commission remains free to adopt different procedures.

<sup>16</sup> *Supra* note 13 at 12525-26.

<sup>17</sup> *Supra* note 13 at 12522-23.

<sup>18</sup> *Supra* note 2, at Criterion Seven.

<sup>19</sup> Document No. XXIV-6, in FTC File No. 215-46.

<sup>20</sup> *Supra* note 3.

<sup>21</sup> *Supra* note 4.



to the Texas Administrative Procedure Act, the Texas Register Act, the Board promulgated rules and regulations supplementing the requirements contained in the State Mortuary Laws.<sup>28</sup> Thus, both the state statutes and the Board's administrative code must be consulted to determine how Texas regulates at-need funeral practices.

#### 1. Is the Coverage of the State Law the Same as the Funeral Rule?

With the exception of § 453.4(a), the Funeral Rule applies solely to the acts and practices of funeral providers.<sup>29</sup> Section 453.1(i) of the Funeral Rule defines a funeral provider as:

... any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

Section 453.1(c) of the Funeral Rule defines funeral goods as:

... the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

Funeral services are defined in Section 453.1(k) of the Funeral Rule as:

... any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

Thus, in order to be covered by the Commission's Rule and, therefore, obliged to comply with its provisions, funeral providers must:

- (1) Sell or offer to sell funeral goods;
- (2) Sell or offer to sell services to care for and prepare the deceased remains for final disposition; and
- (3) Provide services to arrange, supervise or conduct the final disposition.

The Texas law underlying the petition applies in some instances to "funeral directors" and in others to "funeral providers." Funeral directors are defined as:

(1) ... a person who for compensation engages in or conducts, or who holds himself out as being engaged, for compensation, in preparing, other than by embalming, for the burial or disposition of dead human bodies, and maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies.

<sup>28</sup> For example, both the statutory law and the code prescribe information that funeral providers must include on the retail price list. See Tex. Rev. Civ. Stat. art. 4582b 1.5; 22 Texas Administrative Code (hereinafter cited as TAC) section 203.9. The Commission refers to the various Texas mortuary laws, rules and regulations as the "state law" and clarifies the source, when appropriate, by footnote.

<sup>29</sup> Section 453.4(a) applies to crematories regardless of whether or not they meet the definition of "funeral provider."

(2) A person who acts as a funeral director without holding a funeral director license violates this Act. This subdivision does not apply to a registered apprentice who works under the supervision of a licensed funeral director. A person who is engaged in the business of funeral directing or who holds himself or herself out to the public as a funeral director shall be a licensed funeral director.<sup>30</sup>

Under state law, "funeral providers" are:

... any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.<sup>31</sup> However, the state law does not define funeral goods.<sup>32</sup> Rather, it defines "funeral merchandise" as:

... merchandise sold primarily for use in funeral ceremonies, for embalming or for the care and preparation of deceased human bodies for burial, cremation or other disposition.<sup>33</sup>

The State law defines "funeral service" as:

... services performed incident to funeral ceremonies or for the care and preparation of deceased human bodies for burial, cremation or other disposition and includes embalming.<sup>34</sup>

Thus, unlike the Funeral Rule, under state law the term "funeral provider" is not limited to those persons who "arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies," in addition to selling or offering funeral goods and services. Thus, the state law may be broader in scope and coverage than the Commission's Rule. However, under the state law only funeral directors are required to comply with the following provisions: Telephone Price Disclosure;<sup>35</sup> Presentation of a Retail Price List<sup>36</sup> and Presentation of the Written Memorandum.<sup>37</sup> In addition, while § 203.11 of the Texas Administrative Code (hereinafter called the TAC) states that funeral providers must not engage in any of the unfair or deceptive acts or practices defined in that section of the TAC, only licensed funeral directors are required to comply with the preventative requirements set forth in that section.

The Commission requests public comment on to what extent, if any, the

<sup>30</sup> Tex. Rev. Civ. Stat. art. 4582b section 1.A.

<sup>31</sup> 22 TAC 203.1.

<sup>32</sup> Terms of art from the Funeral Rule which are used in the state law without a definition include: "alternative container," "funeral goods," "outer burial container," "unfinished wood box," "services of funeral director and staff" and "statement of services selected."

<sup>33</sup> Tex. Rev. Civ. Stat. art. 4582b section 1.N.

<sup>34</sup> *Id.* section 1.O.

<sup>35</sup> 22 TAC 203.8.

<sup>36</sup> Tex. Rev. Civ. Stat. art. 4582b section 3.H(22).

<sup>37</sup> *Id.* section 3.H(23)

use of both terms, "funeral provider" and "funeral director" alternately, in various provisions of the state law affects the state law's coverage, and the amount of protection afforded to consumers.

A second, and related issue is that the state law specifically appears to limit the obligation to comply with the above mentioned provisions to licensees. In contrast, the obligation to comply with the Commission's Rule is not limited to licensees. Thus, it is not clear whether, under state law, third-party sellers of funeral goods and service who are not licensees would be required to present the "retail price list" or the "written memorandum," provide price information over the telephone to persons who wish to make funeral arrangements, or comply with the preventative requirements in § 203.11 of the TAC.

For an example of the situation described above, the Commission notes that according to the executive director of the Board and the equal counsel to the Board, sellers of prepaid or prearranged funeral contracts do not have to be licensees, nor must they necessarily work for licensed funeral establishments. Thus, because the state law applies only to licensees, they do not, it appears, have to comply with the state law.<sup>38</sup>

Prepaid or prearranged funeral contracts are regulated by the Texas Banking Department.<sup>39</sup> The Banking Department does not have a requirement comparable to either the Funeral Rule or the state law. Thus, it appears an entire category of funeral transactions (prepaid or prearranged funeral contracts) is not regulated by the Board. The executive director stated that if an unlicensed seller of prepaid or prearranged funeral items is an agent for a licensed funeral establishment, the funeral establishment may possibly be liable for violations of the state law committed by the unlicensed seller of prepaid or prearranged funeral contracts.<sup>40</sup>

The Commission seeks public comment on how the exemption from coverage of the state law for unlicensed funeral providers and sellers of prepaid or prearranged funeral goods and services affects the scope of the state law and its level of protection.

<sup>38</sup> Telephone discussion between executive director and staff December 12, 1984, and meeting between staff and counsel to the Board held December 28, 1984. Memoranda of both discussions are identified in FTC File No. 215-46 respectively as XXIII-8 and XXIII-9.

<sup>39</sup> Tex. Rev. Civ. Stat. art. 548b.

<sup>40</sup> See 22 TAC section 203.3(b).



## 2. Definition Issues

a. *Identical Provisions in Both Laws.* The following definitions are identical in both the Funeral Rule and the state law: cash advance items,<sup>41</sup> casket,<sup>42</sup> cremation<sup>43</sup> and direct cremation.<sup>44</sup> As such, they do not raise material issues regarding whether or not the Commission should grant an exemption to Texas.

b. *Dissimilar Definitions in Both Bodies of Law.* i. *Alternative Container.* Section 453.1(b) of the Funeral Rule defines an alternative container as:

... a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

By defining alternative container specifically, the Funeral Rule clarifies the consumer's right to use non-metal and non-wood containers as a substitute for a traditional casket when purchasing a direct cremation.

The state law has a corresponding term and definition called "suitable container," which is defined as:

... a container other than a casket that can be used to hold and transport a deceased human body.<sup>45</sup>

Unlike the state law, the Funeral Rule gives specific examples of the types of products which may be used as alternative containers. Moreover, the Funeral Rule details the types of material used in alternative containers. The state law does not.

The Commission requests public comment regarding whether the state law definition of suitable container limits or broadens the type of container that can be used for direct cremation under the state law and the effect this has on the level of protection provided by state law.

ii. *Crematory.* Section 453.1(g) of the Funeral Rule defines a crematory as:

... any person, partnership or corporation that performs cremation and sells funeral goods.

The state law defines crematory as:

... any person, partnership, or corporation that performs cremation.<sup>46</sup>

The state law definition of crematory appears to be broader than the Funeral Rule definition because crematories need not sell funeral goods under the state law definition. The Commission is aware that some crematories do not sell funeral goods and therefore would not fall within the Funeral Rule's coverage.

Public comment is sought on whether the difference in the state law definition affects the level of protection provided by the state law.

iii. *Outer Burial Container.* Section 453.1(m) of the Funeral Rule defines outer burial containers as:

... any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

The state law uses the term "outer enclosure" to designate the same type of container. It is defined as:

... an enclosure or container placed in the grave above or around the casket and includes burial vaults, grave boxes, and grave liners.<sup>47</sup>

Although the state law definition is not identical to the Funeral Rule, it appears to be the practical equivalent of the Funeral Rule. Thus, the Commission believes it does not raise a material issue concerning the comparative level of protection.

iv. *Person.* Section 453.1(a) of the Funeral Rule defines a person as:

any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

By defining "person" in the Funeral Rule the Commission clearly stated that partnerships, corporations, associations, governments and governmental subdivisions are persons entitled to the protection of the Funeral Rule. The state law does not define "person." Instead, the state law uses the term "prospective customer." Under state law, a prospective customer is defined as a consumer who enters a funeral establishment and inquires about the price of any funeral service or merchandise.<sup>48</sup> Thus, for example, it is not clear whether the state law applies when entities such as memorial societies, trade associations, unions or governmental agencies make funeral arrangements for their members.

The Commission solicits public comment on whether the differences between the terms "person" and "prospective customer" affect the class of parties to which the state law applies

and the level of protection provided to consumers by the state law.

v. *Services of Funeral Director and Staff.* Section 453.1(o) of the Funeral Rule defines this item as:

... the services, not included in prices of other categories in Section 453.2(b)(4) which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

This definition clarifies that funeral providers may not include separately itemized goods and services, such as embalming, in the non-declinable item captioned "services of funeral director and staff." Thus, this definition is designed to enhance the consumer's right to decline unwanted items by preventing an improper "loading" of declinable items into the fees for professional services.<sup>49</sup>

The state law does not provide a definition of "services of funeral director and staff," although it permits funeral providers to make this service non-declinable.<sup>50</sup> Without the benefit of a definition, funeral providers may be uncertain about which funeral services are included in this item and are, thereby, non-declinable. It is conceivable that funeral providers can add goods and services to "services of funeral director and staff" without violating the state law.

The Commission requests public comment on to what extent the absence of a definition of services of funeral director and staff affects the level of protection provided by the state law.

vi. *Unfinished Wood Box.* Section 453.1(d) of the Funeral Rule defines this item as:

... an unornamented casket made of wood which does not have a fixed interior lining.

The Commission provided a definition of an unfinished wood box to clarify the consumer's right to use an alternative to a traditional casket when choosing a direct cremation. State law does not include a definition of an unfinished wood box.

Public comment is sought on to what extent the absence of a definition in the state law affects the level of protection provided by the state law.

*C. Does the State Law Provide a Level of Protection as Great as or Greater Than the Level of Protection Provided by the Funeral Rule?*

In this section of the notice, the Commission has compared the relevant

<sup>41</sup> Compare 16 CFR 453.1(c) with 22 TAC § 203.1.

<sup>42</sup> Compare 16 CFR 453.1(d) with 22 TAC § 203.1.

<sup>43</sup> Compare 16 CFR 453.1(f) with 22 TAC § 203.1.

<sup>44</sup> Compare 16 CFR 453.1(h) with 22 TAC § 203.1.

<sup>45</sup> 22 TAC section 203.1(Q).

<sup>46</sup> *Id.* section 203.1.

<sup>47</sup> Tex. Rev. Civ. Stat. art. 4582b section 1.P.

<sup>48</sup> *Id.* section 1.V.

<sup>49</sup> See SBP at 42285.

<sup>50</sup> 22 TAC section 203.11(h)(2)(A)(i).



state law with the Funeral Rule on a provision by provision basis. Where appropriate, the Commission has noted similarities and distinctions between the Funeral Rule and the state law. In addition, the Commission has identified a number of questions for the public's consideration and comment.

Several provisions in the state law are identical to the Funeral Rule. These provisions concern telephone price disclosures,<sup>51</sup> required purchases of funeral goods and services,<sup>52</sup> services provided without prior approval,<sup>53</sup> misrepresentations<sup>54</sup> and comprehension of disclosures.<sup>55</sup> Since the provisions are identical to the Funeral Rule, they do not raise any significant issues regarding the level of protection provided by the state law.

#### 1. Provisions that are Similar to Provisions in the Commission's Rule

Several provisions of the state law are similar (although not identical) to provisions of the Commission's Funeral Rule. For example, the state law contains a series of provisions concerning required written price disclosures. Under the state law funeral directors are required to present to prospective customers a "retail price list" that discloses the retail prices of the funeral goods and services offered for sale, including caskets and outer burial containers. The Funeral Rule permits funeral providers to devise three price lists—a general price list, a casket price list and an outer burial container price list. The Rule also permits funeral providers to combine all of the information from the three price lists on the general price lists.

Where three price lists are used, the Funeral Rule regulates the timing of the presentation of each list. If only one list is used, § 453.2(b)(4) of the Rule requires funeral providers to give the general price list to all persons (for their retention) who inquire in person about funeral arrangements or about the prices of funeral goods and services, prior to any arrangements discussions.<sup>56</sup>

Under Texas law, any person who arranges for funeral services or merchandise must:

(a) Inform a customer or prospective customer of the availability of a retail price list;

(b) Provide a retail price list to the customer or prospective customer for that person to keep; and

(c) Explain to the customer or prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before the presentation of the retail price list to that person.<sup>57</sup>

The state law does not require funeral providers to give the retail price list upon beginning discussion of either funeral arrangements or of the selection of any funeral goods and services, including caskets and outer burial containers. It appears that under state law, the presentation of the price lists could occur at a later point in time than under the Commission's Rule.

Public comment is requested on to what extent this timing distinction affects the level of protection provided by the state law.

(a) *Price Disclosures for Caskets and Alternative Containers.* Section 453.2(b)(2) of the Funeral Rule requires funeral providers to give to persons who inquire in person about caskets or alternative containers a printed or typed price list that contains at least the retail prices of caskets and alternative containers offered that do not require special ordering and enough information to identify each container. In addition, the casket price list must disclose the name and address of the funeral provider and have an effective date.

The state law requires funeral providers to give prospective customers a document called a retail price list containing, in addition to other information, an itemized list of all caskets the funeral provider offers along with individual prices of each casket.<sup>58</sup>

There are several differences between the state law and the Funeral Rule. For example, the state law does not include a specific requirement that the prices of alternative containers (or suitable containers) be placed on the retail price list.<sup>59</sup> Moreover, unlike the Funeral Rule, the state law does not require funeral providers to provide descriptions of caskets and alternative containers. In addition, the state law does not require funeral providers to give the retail price list to any person who inquiries in person concerning

caskets. Instead, the state law requires funeral providers to give the retail price list to customers or "prospective customers," which under the state law is a consumer who enters a funeral establishment and inquires about the price of any funeral service or merchandise (emphasis added).<sup>60</sup> Thus, for example, if a person inquires about caskets but does not ask about the prices of caskets, the funeral provider would not be obliged to give the person a retail price list under the state law; whereas, under the Funeral Rule, the funeral provider would have to give the person a casket price list upon beginning a discussion of caskets, though price was not discussed.

The Commission requests public comment regarding the degree to which these differences affect the level of protection provided by the state law.

(b) *Price Disclosures for Outer Burial Containers.* Section 453.2(b)(3) of the Funeral Rule requires funeral providers to give persons who inquire in person about outer burial container offerings or prices an itemized price list which contains at least the retail prices of all outer burial containers, and enough descriptive information to identify each container. In addition, § 453.2(c)(2) of the Funeral Rule requires a disclosure on the outer burial container price list stating:

In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

The state law is substantially similar to the Funeral Rule, except that it does not require the price list to include a description of the items offered.<sup>61</sup>

The Commission solicits comment on to what extent the absence of this information affects the level of protection provided by Texas state law.

(c) *Price Disclosures for Funeral Goods and Services.* Section 453.2(b)(4) of the Funeral Rule requires funeral providers to develop a printed or typed price list that discloses the prices for seventeen specifically listed funeral goods and services and any other goods and services that the funeral provider wishes to list. The price list also contains several disclosures regarding legal and other requirements.

<sup>51</sup> Tex. Rev. Civ. Stat. art. 4582b section 1.V.

<sup>52</sup> The TAC defines the term "outer enclosure" as the container placed in a grave above or around the casket. However, the state law does not define the term "outer burial container", although it uses it in section 203.11(c) of the TAC.

<sup>53</sup> Compare 16 CFR 453.2(b)(1) with 22 TAC § 203.8.

<sup>54</sup> Compare 16 CFR 453.4 with 22 TAC §§ 203.11 (g) & (h).

<sup>55</sup> Compare 16 CFR 453.5 with Tex. Rev. Civ. Stat. art. 4582b § 3.H(11).

<sup>56</sup> Compare 16 CFR 453.3 with 22 TAC §§ 203.11(a)-(f).

<sup>57</sup> Compare 16 CFR 453.7 with TAC § 203.115.

<sup>58</sup> See SBP at 42260-61.

<sup>59</sup> Tex. Rev. Civ. Stat. art. 4582b section 3.H(22).

<sup>60</sup> Tex. Rev. Civ. Stat. art. 4582b section 1.S.

<sup>61</sup> The retail price list lists eight specific items for which retail prices must be disclosed. The ninth item states "other itemized services provided by the funeral establishment staff." This ninth item does not appear to cover alternative containers because by virtue of the state law definition, alternative containers are funeral merchandise not funeral service. See Tex. Rev. Civ. Stat. art. 4582b sections 1.N., 1.O., & 1.S(9).



The retail price list required by the state law requires the prices to be disclosed for all of the items enumerated in the Funeral Rule except: (1) Other preparation of the body; (2) other use of facilities; (3) professional services of funeral director and staff; and (4) additional automotive equipment. However, the state law requires "other itemized services provided by the funeral establishment staff" to be listed on the retail price list.

The Commission seeks public comment on whether this general category requires the disclosure of items (1)-(4) above which are not otherwise specifically required to be disclosed, and if not, whether and to what extent this distinction affects the level of protection afforded by state law.

(d) *Price Disclosures at the Conclusion of the Discussion of Arrangements.* Section 453.2(b)(5) of the Funeral Rule requires funeral providers to give persons who select either funeral goods or funeral services (or both) a document combining in one place the prices of the individual items the person is considering for purchase, as well as their total price. The Rule requires funeral providers to give consumers this document directly at the conclusion of the conference at which the items are selected. Texas provides for a similar document which is captioned "written memorandum."<sup>62</sup> However, the state law is silent on when the written memorandum must be given to consumers.

Public comment is solicited on how this lack of a timing component affects the level of protection provided by the state law.

## 2. Provisions of Texas Law Not Included in Funeral Rule

The state law requires funeral establishments to: (1) Display their three least expensive caskets in the same general manner as their other caskets are displayed; (2) disclose that their three least expensive caskets are available in different colors and arrange to obtain caskets in these colors upon the customer's request, if the caskets can be obtained within twelve hours; (3) not suggest that a customer's concern for price reflects a lack of concern for the deceased; (4) not take custody of or refuse to promptly release deceased remains without proper authority from persons capable of giving it; (5) display at least five adult caskets; (6) design display rooms in such a manner that consumers are able to make a private inspection and selection of merchandise;

and (7) explain to consumers that a contractual agreement for the sale of funeral goods and services may not be entered into before the presentation of the retail price list.<sup>63</sup>

Another feature in state law not addressed by the Funeral Rule is the requirement that the Board prepare and disseminate information to consumers explaining various aspects of making funeral arrangements and the consumer complaint process. Accordingly, the Board has published such a consumer information brochure.<sup>64</sup>

Finally, the state law requires funeral licensees to retain retail price lists and written memoranda for two years rather than the one year requirement imposed by the Funeral Rule.<sup>65</sup>

The Commission seeks public comment on how any or all of the protections in the state law that are not addressed by the Funeral Rule affect the level of protection provided by the state law.

## D. Does the State Administer and Enforce Effectively the State Laws?

The final element of § 453.9 of the Funeral Rule concerns whether the state administers and enforces effectively its laws. Staff's state exemption guidelines ask states to submit sufficient information to show a willingness and ability to enforce their laws effectively. In this section of the notice the Commission has summarized enforcement information submitted by the Texas Board of Morticians.

There are 4,222 licensees subject to the state law. Of these, 3,414 have both a funeral director's license and an embalmer's license; 764 have only a funeral director's license, 44 have only an embalmer's license. In addition, there are 1,093 establishments licensed by the Board as funeral establishments. Persons not licensed by the Board, such as those who sell prepaid or prearranged funeral goods and services, are not regulated by the Board.

### 1. Staffing

The State board of Morticians employs five (5) persons in the office: an executive secretary, an administrative technician, a clerk and two investigators. The investigators are detached from the office and reside in metropolitan areas within their respective territories.<sup>66</sup>

<sup>62</sup> See Tex. Rev. Civ. Stat. art. 4582b sections 3 & 4 (state law provisions).

<sup>63</sup> *Supra* note 2, at Criterion Five.

<sup>64</sup> Tex. Rev. Civ. Stat. art. 4582b section 3.13(25).

<sup>65</sup> *Supra* note 2, at Criterion Four.

(a) *Executive Secretary.* The executive secretary supervises the operation of the Board's office and is responsible for its conduct. The executive secretary also coordinates the duties of the clerk, administrative technician and the two investigators, along with the enforcement program of the agency.

(b) *Administrative Technician.* This person performs technical and administrative duties, and assists the Executive Secretary in directing the activities of the agency.

(c) *Clerk.* This person performs "advanced clerical work" requiring familiarity with the laws, rules and regulations of the Agency.

(d) *Investigators.* The Board provides for two investigators who are required to divide time between investigations and inspections. The staff notes that the state law requires the Board to hire a private investigator, licensed under the laws of Texas, who is not regulated by the State Mortuary Laws.<sup>67</sup> However, according to the executive director, the Board has not hired such a person.<sup>68</sup>

### 2. Funding

The Board has been appropriated \$251,360 for fiscal year 1984 (September 1, 1983, through August 31, 1984). Of this amount, \$16,500 is for Board member per diem, and \$234,860 is for other operating expenses. For fiscal year 1985 (September 1, 1984, through August 31, 1985) the Board has been appropriated \$243,610. Of that amount \$16,500 is for Board member per diem, and \$227,110 is for other operating expenses and capital outlay. In fiscal year 1981, the investigators used \$28,519.17 in mileage and per diem expenses; in fiscal year 1982 they used \$35,376.82 in mileage and per diem expenses; and in fiscal 1983, they used \$31,953.77 in mileage and per diem expenses.<sup>69</sup>

### 3. Sanctions

Section 2.H. of the state law authorizes the Board to seek appropriate injunctive relief or to revoke, suspend, or place on probation any funeral providers for violations of the state funeral laws and certain other types of violations. In addition, the Board may refuse to license or admit persons to examination for felony convictions and misdemeanor convictions relating to the practice of embalming or funeral directing. Licensees subject to cancellation or revocation must wait a year before they may reapply.

<sup>67</sup> Tex. Rev. Civ. Stat. art. 4582b section 6D(f).

<sup>68</sup> *Supra* notes 6 & 38.

<sup>69</sup> *Supra* note 2, at Criterion Four.

<sup>62</sup> Tex. Rev. Civ. Stat. art. 4582b section 1.T.



The Board has the power to issue subpoenas, subpoenas duces tecum, to take testimony, and to make findings based on sufficient legal evidence.

According to the Board's legal counsel, the Board does not have authority to seek civil penalties (or fines) against funeral providers who have been found in violation of state law, except against those found practicing without a proper license.<sup>70</sup>

In addition to the charges that the Board may bring, the attorney general is empowered to seek injunctive relief and civil penalties of not more than \$2,000 per violation, not to exceed a total of \$10,000, against licensees suspected of false and deceptive trade practices, under the Texas Deceptive Trade Practices Act.<sup>71</sup>

Under section 5(m)(1)(A) of the Federal Trade Commission Act, the Commission may seek civil penalties in an United States district court against any funeral provider found in violation of the Funeral Rule. The penalty may be up to ten thousand dollars (\$10,000) for each violation. Moreover, the Commission, pursuant to section 13(b) of the Federal Trade Commission Act, may seek injunctions in an United States district court for violations of the Funeral Rule.

#### 4. Allegations of Non-Enforcement

In September 1984, the Commission received from Mr. Grady Baskins, Jr., one of the three consumer members of the Board, the results of a three-month investigation in which 24 funeral homes in Dallas and Houston were surveyed for compliance with the state law. The survey was conducted from June to August 1984. Posing as a bereaved consumer, Mr. Baskins requested retail price lists and other price information at each home he visited. Of the 24 homes visited, or otherwise surveyed, only one was characterized by Mr. Baskins as in compliance with the state law.<sup>72</sup>

In October 1984, the Commission received a copy of a petition that Consumers Union, a private nonprofit consumer organization, and the Gray Panthers, another consumer organization, jointly filed with the Board of October 11, 1984, alleging that:

1. "The Board has failed to ensure compliance by the funeral industry by

not investigating the indications of substantial non-compliance contained in the Baskins survey";

2. "The Board has failed since 1979 to comply with Section 6D(f) of the State Mortuary Laws which require the Board to employ at least one person who is a licensed private investigator under the laws of Texas and who is not regulated under the State Mortuary Laws";

Consumers Union and the Gray Panthers also requested: (1) That the Board initiate a statewide investigation into price disclosure practices of Texas funeral providers; (2) that the Board adopt a number of new state rules regarding funeral practices; (3) that the Board immediately seek alternative office space not associated with the Texas Funeral Directors Association; and (4) immediately withdraw the application for exemption from the FTC's trade regulation rule on Funeral Industry Practices.

On November 26, 1984, the Board responded to the petitioners' complaints and requests.<sup>73</sup> The Board reported: (1) It was unable at that time to vacate its current location due to its lease; (2) it had sent an investigator to each of the 24 funeral establishments named in the Baskins survey. Most were found in violation of the state law (but in compliance with the Funeral Rule, according to the Board); (3) that its investigators had explained to the licensees what the state law required, and a subsequent visit to each funeral establishment found all were in compliance with the state law; (4) that on September 21, 1984, the Board had mailed to all of the 1,093 licensed funeral establishments a notification concerning the price disclosure requirements of state law; and (5) that it is seeking funding from the state to hire a licensed private investigator who is not regulated by the Board.

#### 5. History of Enforcement by the Texas Board of Morticians

The Board has provided, in the petition, abstracts of the 154 complaints it received from consumers from 1981 through 1983. Fifty-three were dismissed because the Board did not have jurisdiction over the subject matter. In the remaining 101 cases, only sixteen involved situations similar to those that are regulated by the Commission's Funeral Rule.

Thirteen of these cases involve allegations that the funeral provider failed to obtain permission to embalm. In nine cases no violations were found and in one the charges were dropped. In

another, a violation was found. In the remaining two cases, staff is unable to discern the disposition from the abstracts in the Texas petition. It appears that in the case in which a violation was found, the consumer sued the funeral provider under the Texas Deceptive Trade Act.<sup>74</sup> The funeral provider has appealed the initial judgment and, apparently, the Board will file charges if the judgment is upheld.

There were two cases in the Petition that involved an allegation of failure to give a retail price list. Violations were found in both cases. In one, the funeral provider was placed on a one year probation; in the other, the petition did not indicate the disposition rendered by the Board.

Finally, there was one case involving a failure to provide a written memorandum. No violation was found.

#### 6. Recent Cases Before the Board

The Board reported that in fiscal year 1984 (September 1, 1983 to August 31, 1984) it received 88 complaints against various licensees.<sup>75</sup> Staff has developed a chart to show the types of complaints the Board received and its disposition of them.<sup>76</sup> Some of the 88 complaints involve multiple allegations. In all, staff counted 116 separate allegations of state law violations. Ten allegations were dismissed because the Board lacked jurisdiction. For 28 of the allegations staff was unable to discern the Board's disposition from the abstract. Two cases are still pending, and in one case the Board was unable, for some reason, to investigate the complaint.

Thirteen allegations involved practices the Funeral Rule was designed to address. Seven of these involved an alleged failure by the funeral provider to give a retail price list prior to entering into a contract with a consumer. In one case the Board suspended the funeral provider's license for three months. In two cases letters of caution were sent to the funeral providers. Two complaints were dismissed; the disposition of the other two was not clearly stated on the abstract.

Three allegations involved failures to give a written memorandum after the consumer had selected items for purchase. One complaint was dismissed. In the other two, letters of caution were sent.

The last three allegations involved alleged unauthorized embalming. In one

<sup>70</sup> See *supra* note 38.

<sup>71</sup> Tex. Bus. Code Ann. section 17.47.

<sup>72</sup> A copy of the survey is contained in a memorandum dated August 3, 1984, from Grady Baskins to the Board, along with a newspaper account of this matter from the Dallas Times Herald, Wednesday, August 29, 1984. It is identified in FTC File No. 215-46 as Document XXIII-10. See also note 38 (meeting with legal counsel to the Board).

<sup>73</sup> *Supra* note 6.

<sup>74</sup> *Id.* section 17.50.

<sup>75</sup> See *Supra* note 7.

<sup>76</sup> This document is identified in FTC File No. 215-46 as Document XXIII-11.



case the Board revoked the license of the funeral establishment. In the second, the Board suspended a license for thirty days. In the last, the Board sent the establishment a letter of caution.

#### 7. Private Rights of Action

The state law administered by the Board does not purport to provide the exclusive means for consumers to remedy unfair or deceptive acts or practices carried out by funeral providers.<sup>77</sup> In fact, when a person files a complaint with the Board, the Board must furnish an explanation of the

remedies available under the state law and information about appropriate state or local agencies with which the person may file a complaint.<sup>78</sup>

In addition, the Texas Deceptive Trade Practices Act permits consumers to file actions in court against funeral providers if they allege that they suffered actual damages from an unfair or deceptive act or practice committed by the funeral provider.<sup>79</sup> The law provides for actual damages, court costs, attorney's fees (if the consumer prevails) and possible double damages.<sup>80</sup> This Act is intended to supplement other

remedies that the consumer may pursue such as, contract, tort, equity or criminal sanctions.<sup>81</sup>

The Commission seeks public comment on whether the petition demonstrates that Texas is administering and enforcing effectively the state law.

#### List of Subjects in 16 CFR Part 453

Funerals, Trade Practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-26403 Filed 11-5-85; 8:45 am]

BILLING CODE 6750-01-M

<sup>77</sup> Tex. Rev. Civ. Stat. art. 4582b section 3.H. It states, *inter alia*, "[t]his Act does not affect any remedy or enforcement power under other laws."

<sup>78</sup> *Id.* section 6D(e).

<sup>79</sup> Tex. Bus. Code Ann. section 17.50.

<sup>80</sup> *Id.*

<sup>81</sup> Tex. Bus. Code Ann. section 17.42.



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